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**The Paradox of Militarization:**

**Democratic Oversight and Military Autonomy in Mexico and Colombia**

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**The Paradox of Militarization:  
Democratic Oversight and Military Autonomy in Mexico and Colombia**

**by  
Jacob Goodman Dizard**

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*To my mother, Debbie Friedman, and my stepfather, Nick Toia*

*Who have always offered love, support, and refuge*

*Even when I took it for granted.*

**The Paradox of Militarization:**  
**Democratic Oversight and Military Autonomy in Mexico and Colombia**

Jacob Goodman Dizard, Ph.D..

The University of Texas at Austin, 2018

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Throughout Latin America, leaders facing persistent internal security threats have expanded military deployments. In such circumstances, civilian policymakers place an important political bet on military compliance and effectiveness in carrying out the mission—and are therefore loath to raise the military’s hackles by encroaching on sensitive institutional prerogatives. Contrary to the expectation of reinforced military autonomy, however, large-scale mission expansions in Mexico and Colombia showed that the disruptions induced by militarization can yield increased democratic oversight of the armed forces. In Colombia the change in democratic oversight was dramatic: between 2009 and 2017, over 1,000 soldiers were convicted of murder in civilian courts. Mexico’s oversight rise proved more tenuous, but the military lost its ability to protect soldiers accused of rights violations from prosecution in the civilian justice system. That the increases in oversight occurred most starkly in the realm of judicial accountability is puzzling, since prosecutions have been treated as the third rail of civil-military relations. To explain these changes, I start by noting that military autonomy thrives in the darkness, but militarization places a spotlight on military behavior. When rights abuses occur, civil society actors mobilize to create pressure for accountability at both the domestic and international levels, especially by calling

attention to militarizing states' failure to comply with obligations under domestic laws, international treaties, and foreign assistance packages. Greater international pressure, in particular, weakens domestic leaders' commitment to protecting the military from greater oversight. Despite this pressure, reform will be limited while executives remain dependent on the military to maintain order—as in Mexico. The existence of a policy alternative to militarization, however—such as Colombia's peace process with the country's main rebel group—may result in a fracturing of the executive-military alliance and pave the way for a substantial increase in democratic oversight.

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## **CHAPTER 1:**

### **INTRODUCTION**

On June 30, 2014, soldiers from the 102<sup>nd</sup> Infantry Battalion of the Mexican Army surrounded a warehouse in the municipality of Tlatlaya and engaged a band of alleged kidnappers inside, resulting in the deaths of 22 citizens. Questions quickly emerged, however, about the official account portraying all casualties as gang members. Journalistic accounts contesting the military's narrative were picked up by nongovernmental human rights organizations, who made a vocal case in domestic and international forums that the deaths at Tlatlaya were extrajudicial executions. Under pressure, civilian prosecutors initiated legal procedures against seven soldiers, but in May 2016 a judge in the civilian justice system suspended the case, citing weak evidence offered by prosecutors, and no formal investigation into orders issued by superior officers was initiated. Despite sustained complaints by rights activists, proceedings in the military justice system also largely favored the official version: while three soldiers were convicted of insubordination, just one received a prison sentence, of one year (Ángel 2016).

In contrast, a Colombian court in August 2016 handed down prison sentences ranging from 34 to 42 years to 10 soldiers convicted of murdering 2 civilians in 2005 and presenting them as collaborators with left-wing guerrillas. As just one more incident amid Colombia's grueling counterinsurgency fight, doubts about the military's version had taken longer to emerge and proceed toward formal prosecution than the incident in Mexico. Once the case began, however, military protestations that the accusations were a result of civilian failure to comprehend the nature of war proved ineffectual. Remarkably, the convictions were fairly routine: over 800 soldiers had already been convicted of similar acts since 2010 (*El Espectador* 2016).

## Research Questions and Puzzle

What explains the contrasting outcomes in Mexico and Colombia? This dissertation addresses an issue of increasing importance in contemporary Latin America: the repercussions for democratic oversight of the military when democracies assign the armed forces to carry out expansive internal missions, a phenomenon often labeled “militarization.”<sup>1</sup> Despite the relatively recent, often fragile attainment of basic civilian control over the military, an increasing number of Latin American countries are assigning troops broad duties in providing internal security.<sup>2</sup> The cause of the trend is evident: increased rates of criminal activity have outpaced states’ ability to improve civilian law enforcement, leaving the military to fill the void when political pressure for a response grows. Such policies fly in the face of academic wisdom. Scholars of civil-military relations and democratization have long urged developing countries to progressively limit the military’s internal role, lest the generals gain autonomy and become less responsive to elected leaders. As my dissertation shows, however, the implications of these mission expansions for oversight of the military by elected policymakers and society in general are more complex than previous theories would lead us to believe. The efficacy and wisdom of militarization as a pillar of public security policy is highly debatable, but it *can* be compatible with increased democratic oversight.

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<sup>1</sup> This study defines militarization as the expansion of military missions to enforce security statutes within the national territory, as evidenced by an increase in numbers of deployed troops and/or confrontational tactics. The key term is *expansion*: military members have played a limited but enduring security role in many countries, but militarization denotes a qualitative change in the scope and nature of the military mission. Note that this usage differs from the colloquial sense of the term in the U.S. (which is also a secondary definition in Latin America): the increasing provision of military equipment and adoption of military tactics by federal, state, and local police departments. The distinctive institutional power of militaries (and the distinct legal system that usually governs their conduct) makes them worthy of the particularized analysis adopted in this study.

<sup>2</sup> As of 2016, various branches of the military were performing public security roles in (from north to south) Mexico, Guatemala, Honduras, El Salvador, Colombia, Venezuela, Ecuador, Peru, Brazil, Bolivia, Paraguay, and Argentina—i.e., most countries in the region (Donadio 2016).

What explains the unexpected patterns seen in Colombia and Mexico, countries that share a long history of civilian-led government coupled with weak military accountability, and that in recent years intensified the military's role as the key guarantor of internal security? How is Colombia, a country highly dependent on its armed forces to maintain domestic order, able to frequently prosecute soldiers for human rights violations? Why is Mexico unable or unwilling to impose severe consequences for abuses of civilians as the military responds to its simmering security threat? In short, what are the conditions under which militarization leads to greater democratic oversight? My dissertation, which draws attention to this puzzle through a comparative examination of Mexico and Colombia, probes the conditions under which militaries that are engaged in expansive internal security operations become subject to increased democratic oversight.

This introductory chapter will briefly summarize the study's central argument: military excesses during militarization, especially rights violations, produce pressure to check military insulation from democratic oversight. I will then describe the substantive and theoretical relevance of the study and conclude with a guide to the subsequent chapters in the analysis.

## **The Argument**

Explaining the puzzling outcomes in Mexico and Colombia requires recognition of a key pattern: the series of events precipitated by expanding the military's internal security mission generates an unfamiliar, unwelcome spotlight on military behavior. While civilian leaders are loath to openly challenge the generals regarding core institutional prerogatives, mobilization by political actors outside the executive branch—in particular, human rights groups—can disrupt tacit or explicit attempts by civilian officials and military members to establish a civil-military

equilibrium. Eventually, loose coalitions, which I label the *social order coalition* and the *oversight coalition*, form to contest the boundaries of military autonomy, with a focus on the issue of abuses and judicial accountability. When the social order coalition—which prioritizes mission fulfillment over vigilant democratic oversight—maintains its cohesion, mild reforms are possible but significant accountability gains will be blocked, as in the case of Mexico. Conversely, if the oversight coalition grows, effectively harnesses international reform pressure, and presents alternatives to militarization—as in Colombia—a weakening of social order coalition resistance can yield a wave of accountability that signifies sustained increases in democratic oversight.

To support my argument, I delineate a consistent set of key variables tied to an empirically common sequence of events that characterizes militarization. In so doing, I provide an alternative to previous conceptualizations of civil-military relations, which generally focus on civilian control, i.e., the primacy of civilian officials in defining military roles, the institutional structure of civil-military interactions, and the extent of military prerogatives. I instead propose a distinct concept, *democratic oversight*, that emphasizes civilian will and capacity to enforce military compliance with laws and respect for constitutionally-guaranteed citizen rights. By foregrounding these normatively demanding criteria, I provide a conceptual apparatus appropriate for evaluating the state's management of the military's coercive power.

In the first step of the posited sequence,<sup>3</sup> soldiers carrying out the expanded mission arrive on a “battlefield” where they encounter both highly trained opponents and a network of noncombatant support structures. Given the combination of fog of war; the tension between maximal protection of citizen rights and military training that is oriented around the use of

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<sup>3</sup> This is a highly stylized version used to illustrate the theory; as the empirical chapters illustrate, militarization is far from a wholly new phenomenon in either Mexico or Colombia, and some version of the social order and oversight coalitions generally pre-date militarization.



overwhelming force; a history of impunity for rights violations; and pressure to produce results—most easily measured in body counts—human rights abuses are a regular feature of militarized security contexts (Inter-American Commission on Human Rights 2009, 39-40; Withers et al. 2010).

The second phase implicates the state response to abuse allegations by human rights groups: military leaders deny accusations and seek support from executive branch leaders—most prominently President Felipe Calderón in Mexico, and President Álvaro Uribe in the case of Colombia. These officers and policymakers tighten their alliance and are joined by like-minded officials in other branches as members of the *social order coalition*, which prioritizes mission continuity over redress of victims' grievances or detailed monitoring of military behavior. On the other side, human rights groups and their supporters in the emergent *oversight coalition* mobilize to collect information about abuses, publicize patterns of military misdeeds, stop abuses, and deter future ones. Given the rigid posture maintained by the executive and military, the oversight coalition also pursues international support, initiating a pattern famously described by Keck and Sikkink (1998) as the “boomerang effect.” Depending on organizational efficacy and domestic vulnerability to international leverage, transnational mobilization may generate tangible pressure on militarizing states.

The third phase returns the focus to domestic politics and institutions. With outside scrutiny generating increased costs for noncompliance with international norms, civilian officials rebalance the costs and benefits of continued alignment with the military's high-autonomy preferences. If the reputational or material costs are high but civilians lack a policy alternative to continued dependence on the military, acceptance of greater democratic oversight will be stunted. This is the case of Mexico, where the oversight coalition successfully disrupted military autonomy, but

judicial accountability efforts stagnated in the face of ongoing dependence on the military to combat organized crime. If, however, heightened costs are matched by the availability of policy alternatives to militarization, democratic oversight can increase. Thus, in Colombia, the decision to aggressively pursue a peace process with Revolutionary Armed Forces of Colombia (FARC) guerrillas presented an alternative future of less dependence on the military—and also fractured the social order coalition. The political reshuffling that followed facilitated the sustained judicial accountability sought for years by the oversight coalition, along with other tentative democratic oversight improvements.

In short, militarization produces a paradox: as the case studies will demonstrate, expanding the armed forces' role can actually undermine their insulation from democratic oversight. As in other realms of public policy, opacity, insularity, and deficient accountability thrive in the shadows—and militarization shines a spotlight on the military. Revelations of militarization's dark side are not, however, sufficient to prompt the imposition of greater democratic oversight. Rather, outcomes depend on the interaction of players within an arena subject to evolving, interdependent structural and political conditions. Considering the power of militaries and their political allies, it is unsurprising that the attainment of greater oversight is far from guaranteed. Nevertheless, the study serves as an ameliorative to the pessimism that often pervades analysis of country contexts marked by internal disorder and enduring military power.

### **Substantive Relevance**

Civilian control of the military is universally understood to be a fundamental prerequisite for democratic survival and consolidation. For the dozens of states—mainly though not exclusively found in the developing world—that have experienced direct military intervention in politics

during the 20<sup>th</sup> and 21<sup>st</sup> centuries, reestablishing civilians as apex decisionmakers is the first order of business as democratic transitions begin. Regardless of how long a given regime endures, the military *problematique* remains a salient concern in all democratic states. Even when the prospect of a military-led coup d'état recedes, the institutional position of the armed forces provides unusual capacity to resist reform, and civilians often tread lightly on reform initiatives, since too heavy a step might induce outward military politicization.

Viewed from a normative perspective, expanding not just *civilian* but *democratic* oversight is an essential task—more so when the military has an extensive history of internal activity. Except in the rare cases (such as post-Falklands Argentina) in which military discredit is total, policymakers generally cannot or opt not to use the critical juncture of transition to implement a full suite of democratic reforms (O'Donnell and Schmitter 1986; Hunter 1997, Fitch 1998, Barany 2012). Subsequent path dependence is not insurmountable; along some dimensions of civil-military relations, electoral imperatives or ideological commitment can prompt policymakers to clip the military's wings (Hunter 1997). Along other dimensions, however, civilians lack capacity, interest, and will to prioritize democratically “progressive” reforms with less obvious political payoff and a lack of interested constituencies. Thus, the civil-military balance often reaches a delicate equilibrium in which, absent severe shocks, the military retains significant autonomy in multiple domains.

In the context of militarization, then, the first problem facing society is how to ensure that an expanded internal security mission does not produce regression. Multiple negative consequences are plausible, including degraded civilian authority over doctrine, strategy, and operations; wasted resources; military politicization; and above all, human rights abuses. In theory, no actor—civilian policymaker, military commander, or civil society member—seeks any of these

outcomes, but the problem is that the incentives generated or reinforced by militarization tend to produce some if not all of them. Such perverse outcomes are not guaranteed, but are common and observable, and institutional pathologies can be increasingly difficult to uproot once they have become ingrained.

While militarization therefore poses a challenge, it may also offer an opportunity. Consequently, another substantively relevant component of the research is analysis of social and political actors' reactions to deficits in democratic oversight. Revelations of abuses, opacity, and military resistance to oversight are liable to generate pressure on the military from civil society, some civilian officials, and some foreign governments. Under what conditions do mobilization efforts by actors seeking greater oversight gain traction? Which military prerogatives are susceptible to oversight efforts, and what are the truly neuralgic points? Improved understanding of the dynamics unleashed by militarization benefits both practitioners and scholars. Practitioners gain perspective on reform possibilities amid the interactions of different political contexts, institutional structures, and mobilization patterns. Among scholars, non-specialists in civil-military relations benefit from demystification of the armed forces, while civil-military scholars gain deeper insight into the actors who seek to contest the forms and boundaries of contemporary military roles.

### **Theoretical Relevance**

This study extends the breadth of Latin American civil-military relations scholarship, and integrates it with the overlapping human rights literature, in which the military is a crucial but shadowy presence. A central objective of the study is to propose an alternative to civil-military analyses that circumscribe their focus to the presidential-military relationship. In contrast, this

study highlights the disruptive power of players outside the presidential-military dyad—particularly the transnational activist movements that have received enormous attention in the subfield-spanning human rights literature.

Militarization is an appropriate subject for such an integrated approach. The effects of militarization on civil-military dynamics are only starting to receive serious scholarly attention from scholars of Latin American civil-military relations. The region's dictatorship and democratic transition eras produced fertile analysis of the military's internal cultural and ideological norms, socialization and professionalization processes, and the interaction of institutional prerogatives with democratic politics. More recent scholarship has emphasized institutional organization and examinations of military "effectiveness." Most civil-military scholarship, however, has maintained the traditional framework of a two-player interaction, with the presidency and the military at either end of the axis of political conflict. Since under militarization the interests of these two players are largely aligned, it falls to outside actors to challenge the civil-military equilibrium. The absence of comprehensive incorporation of these actors has led to a dearth of analyses that encompass the full array of militarization's effects. Indeed, a subfield based on a normative claim—civilians should control the military's behavior—has produced surprisingly few deep examinations of mission expansions that vastly increase violent confrontation between the military and citizens. This study not only brings to the analytical forefront the (relatively benign) claim that soldiers should be punished for the human rights abuses that accompany militarization, but explains why this issue is central to contemporary democratic oversight of the military, rather than just another item on the laundry list of military prerogatives to be managed.

More focused attention to militarization's effects has come from practitioners, mainly human rights advocates, who offer exhaustive documentation of patterns of military behavior.

Their work has been actively incorporated into scholarship examining transnational activism and legal mobilization—but integration of the military’s perspective and preferences has been notably thin. By providing detailed examination of two dramatic cases of military role expansion, the study contributes to our understanding of mechanisms of activist influence—and how that influence is conditioned on the reactions of the military and its allies. For example, by emphasizing how transnational actors funnel pressure toward the question of judicial accountability, the study highlights activists’ ability to disrupt efforts by the military and the executive to credibly commit to a stable civil-military equilibrium. In essence, I take a dependent variable—democratic oversight—generally analyzed within the civil-military relations subfield, and explain divergent outcomes via mechanisms more commonly analyzed by scholars of activism, accountability, and human rights. The study therefore demonstrates how cross-fertilization among literatures furthers the ultimate goal: improved understanding of the state’s management of violence in fragile democracies.

## **Organization of the Dissertation**

This study is based on a generalizable framework assessing militarization’s effects, backed by detailed process tracing of two major cases: Colombia and Mexico, with a special focus on the period since 2002 in the case of Colombia and 2006 in the case of Mexico. Chapter 2 elaborates my argument, first explaining why most previous civil-military relations and human rights perspectives would predict that militarization would generate increased military autonomy, and then why those theories require modification. I then propose a dynamic framework describing the core paradox: by exposing democratic oversight deficits, militarization disrupts high-autonomy equilibria. For increased scrutiny to be converted into tangible improvements in democratic

oversight, reform advocates must be able to both keep disrupting civil-military equilibrium and exploit cracks in the presidential-military alliance.

Chapters three to six comprise the empirical heart of the study, starting with Colombia. In Chapter 3, I offer an overview of the volatile civil-military environment both prior to and during militarization. I first describe how the political and social turbulence of the late 20<sup>th</sup> century left democratic oversight at a low point on the eve of large-scale mission expansion starting in 2000. I then detail how early phases of militarization reinforced democratic deficiencies, even as the policy's unintended consequences planted the seeds for increased oversight. Chapter 4 centers on judicial accountability as the locus of civil-military friction during Colombia's militarization. The political and organizational sophistication of both the social order coalition and the oversight coalition generated impassioned disputes about military accountability. Unlike in Mexico, the existence of a viable alternative to militarization—a peace process that brought the country's main insurgent group to the bargaining table—prompted a fracture of the social order coalition, allowing the oversight coalition to exploit an opening and achieve what I label *routinized prosecutions* of military rights violators. While Colombia remains far from an exemplar of democratic oversight, its experience illuminates the pathways to reform even amid severe security threats.

Chapter 5 shifts the focus to Mexico. I examine civil-military relations and the national political context prior to and during militarization in Mexico. I first establish the high-autonomy nature of the institution in the years preceding the large-scale militarization of 2006, followed by an overview of the evolution—or lack thereof—of democratic oversight in Mexico. As in Colombia, militarization fits the theorized pattern of expanded deployment followed by abuses, a brighter spotlight, and retrenchment by the military and executive branch. However, Mexico's more closed institutional structure—the Army and Navy are separate ministries, each led by an

active-duty military officer—and relative imperviousness to international pressure prevented far-reaching changes in levels of democratic oversight. Although civilian engagement with the military slowly increased, so did military power, and by the end of the period of analysis, open military policy lobbying was on the rise. In Chapter 6 I describe and analyze Mexico’s experience with judicial accountability. Militarization-linked rights abuses activated the oversight coalition, but a lack of alternatives to continued large-scale military operations sustained the generals’ leverage, yielding only modest, contingent reform. Nonetheless, attention helped expand civil society’s capacity to contest regressive state actions, setting the stage for continued disequilibrium as long as militarization remains the core of Mexican security policy.

I conclude in Chapter 7 by summarizing the evidence for my argument, assessing the comparative and practical lessons of the study, and describing its broader implications for democracy.



## CHAPTER 2:

### THEORIZING MILITARIZATION'S EFFECTS

#### Research Question and Central Puzzle

Militarization is an important phenomenon: it constitutes both an admission of the failure of previous internal security policies and a dramatic response. Civil-military relations in the countries in which militarization occurs generally feature extensive domains of significant military autonomy. Once undertaken, moreover, militarization aligns the interests of civilian and military leaders, all of whom are eager to highlight successes and downplay shortcomings. For these reasons, existing civil-military relations theories would tend to predict poor prospects for increased democratic oversight while militarization remains the core internal security policy. And yet, the observed trajectory of Mexico and Colombia belies this narrative: despite tight alignment between the military and civilian leaders, military autonomy was dented in Mexico, and Colombian soldiers were subjected to a wave of murder prosecutions even as the military's role remained crucial. To recapitulate this study's basic argument, the rights abuses that coincide with militarization mobilize outside actors who seek to disrupt elite attempts at maintaining a high-autonomy civil-military equilibrium. These actors can increase the cost to the executive branch of military autonomy, heightening the probability that the level of democratic oversight of the armed forces will increase.

This chapter will establish a theoretical framework that guides the subsequent empirical analysis. In a first step, I elaborate the need for a civil-military relations theory that foregrounds democratic oversight. I then describe why current theories provide inadequate guidance to the civil-military contestation sparked by militarization. In so doing, I assess not only civil-military relations theories but also incorporate the human rights and judicial politics literatures—each of

which offers crucial insights, but none of which suffices to explain the process and outcomes in Mexico and Colombia. I then detail the key actors and coalitions at the center of the militarization narrative. Turning to the stylized sequence of events, I describe the endogenous process by which military actions generate a set of counterreactions, the impact of which depends on the force of two crucial independent variables. The next section explains how this sequence leads to the observed outcomes in Mexico and Colombia. Finally, I discuss the research plan and address potential methodological concerns.

### **Civil-Military Relations and Democratic Oversight**

What are the conditions under which militarization leads to greater civilian control? Answering this question requires engaging the vast body of civil-military relations research. One premise—indeed, the *raison d'être* of the subfield—is that the key civil-military problem facing democracies is ensuring that militaries do not participate in overthrowing civilian leadership (Huntington 1957, Finer 1962, Feaver 1999; Barany 2012). Given a history of chronic coups as well as recurrent economic and social crises, scholars looking at post-third wave democracies (Huntington 1991) have justifiably focused on coup-proofing methods. Early studies taxonomized the forms of military contestation liable to result from civilians asserting control of military prerogatives (Stepan 1988), as well as the appropriate sequence of reforms (Agüero 1995; Serra 2010) and strategies for preventing coup coalitions from forming within the military (Trinkunas 2005). As Latin American nations weathered such crises as the 1998-2002 series of financial shocks without reverting to coup cycles, confidence rose that a baseline level of democratic consolidation had been established. In this context, civil-military observers shifted toward issues of “second-generation” reforms (Cottey, Edmunds, and Forster 2002), such as institutional

structures (Pion-Berlin 2009), and management of overall defense policy. In this era of “normalized” civil-military relations, concern about coup avoidance ceded to discussion of the military as an active policy instrument (Pion-Berlin and Martínez 2017, 5), with concerns about military effectiveness (Bruneau 2013; Bruneau and Matei 2008) and mission fulfillment (Jaskoski 2013) at the scholarly frontier.

Many recent frameworks situate civil-military relations within the broader discussion of quality of democracy, but present the civil-military dynamic as an institutional relations problem rather than a domain in which basic state duties to citizens are sharply contested. These analyses incorporate a comprehensive panoply of civil-military dimensions (Pion-Berlin and Martínez 2017), but tend to underplay aspects of unusual substantive importance in the context of Latin American militaries’ contemporary roles. Frameworks that are appropriate for the “new normal” of low coup probability and expanding domestic missions are incomplete unless they include assessment of the military’s obligations to citizens in states ostensibly governed by the rule of law. Wasted resources or inefficient institutional structures are challenges that call for remediation, but torture or murder—which are discussed but not highlighted in existing frameworks—undermine the state’s most fundamental obligations to the population. The greater the military’s role in providing internal security, the more questions related to violence not only arise but, I argue, tend to become the most contentious dimension of civil-military relations. A more forthright assessment of the military’s relationship with the ultimate principal in democratic societies—the citizenry—is necessary.

Why such limited analysis of the application and consequences of military violence? Timidity about engaging in normative analysis is not the problem: civil-military scholars habitually dispense advice on “proper” institutional configurations and “appropriate” boundaries

of military autonomy. There are two sources of the sparse engagement with militarization. First, scholars have followed the lead of policymakers, for whom the problem of accountability for human rights abuses is the third rail of civil-military relations (Hunter 1997; Fitch 1998, 145; Pion-Berlin 2010, 537-539). Military resistance to prosecutions created mini-crises in multiple post-democratization states. In Argentina an early accountability wave produced a brief military uprising (Norden 1996; Pion-Berlin 1997), after which judicial accountability efforts went fallow for years. Following the transition in Chile, ex-dictator Augusto Pinochet made very clear that trials would not be tolerated, even ordering a “security, readiness, and coordination” exercise in December 1990 that was understood to be a direct warning against trials for rights abuses (Loveman 1991). In other countries, such as Peru (Cornell and Roberts 1990) and Guatemala (Barany 2012, 172), military members or allies intimidated and attacked investigators of rights abuses implicating the security forces, while lobbying vigorously against any limits on the scope of military justice systems. For most of the 1990s, challenging military impunity from within the state was verboten in nearly every democratizing Latin American state, leaving few new developments for scholars to discuss.

Since the 2000s, the expansion of military roles in countries throughout the region has reinvigorated the political salience of judicial accountability when soldiers perpetrate violence against civilians. Yet scholarship has lagged in addressing the increasingly intense interactions between militaries and citizens. One reason is an overly narrow focus on the relationship between the presidency (and to a lesser degree, the legislature) and the military as the primary locus of inter-institutional conflict. Policy initiatives that rankle the military, often involving organizational and budget issues, emanate from shifts in elected officials’ priorities (Hunter 1997; Feaver 2003). In Latin America, the executive is almost universally the dominant actor on civil-military issues

(Pion-Berlin and Trinkunas 2007). Civil society actors are present, but the executive mediates their impact on civil-military relations. This study, in contrast, suggests that while the presidential-military relationship is certainly fundamental, the dynamics of militarization cannot be understood without accounting for outside actors' power to disrupt the preferred civil-military equilibrium. Explaining militarization's paradoxical effects requires greater attention to actors outside the executive-military relationship and, indeed, outside the state.

To address shortcomings in the literature, this study privileges *democratic oversight* of the military as the primary outcome of interest. Other fundamental aspects of civil-military relations, such as budget levels, military doctrine, and economic privileges, receive attention as well—especially insofar as they are endogenous to the level and form of democratic oversight—but the emphasis is on the role of state institutions and civil society in seeking to apply democratic norms to the actions of the armed forces. The following concepts occupy a central role in the study's analysis of democratic oversight:

- **Civilian Engagement:** This concept aggregates several linked components that express the degree to which civilians have the capacity and power to guide military policy. The first is *civilian expertise*: As several scholars have emphasized (Cottey, Edmunds and Forster 2002; Pion-Berlin and Trinkunas 2007), the level of civilian expertise regarding security and defense issues is a cornerstone determining factor in democratic oversight. This applies not only within the defense policy establishment, but within other branches and civil society as well. In the U.S., for example, the significant complex of defense-oriented think tanks, research centers, and advocacy groups plays an invaluable role in fire-alarm monitoring (McCubbins and Schwartz 1984) and promoting more transparent and responsive defense

management. The second is *civilian presence* within formal defense institutions. In the standard configurations common to both democracies and authoritarian states, the military is a part of the executive branch and answers to a president or prime minister as commander-in-chief. Evaluations of institutional structure therefore directly involve the interactions between top civilian officials and the military hierarchy. A greater role for civilians within defense institutions is important not only because civilians can offer expert input, but also because civilianization brings democratic incentives directly into the defense policymaking process (Bruneau and Goetze 2006; Barany 2012); in this sense, even low-capacity civilian presence raises the probability of effective democratic oversight relative to situations in which civilians are absent. The final component of civilian engagement is *legislative oversight*. Monitoring by the elected legislature is another well understood feature of effective civilian control within democracies; in security policy as in all other policy realms, the legislature is the heart of democratic checks and balances. In Latin America, however, legislative involvement has ranged from nonexistent to sporadic (Pion-Berlin and Trinkunas 2007), and in nearly all cases manifests as deference to the military, the executive, or both. Very rarely have legislatures independently initiated significant changes to military policy or held a recalcitrant executive responsible for incompetent or undemocratic management. Importantly, deficient legislative oversight is not a merely a byproduct of weak civilian expertise; rather, it is correlated with lack of political will and weak incentives to prioritize defense issues on the legislative agenda (Ibid.).

Militarization should, however, increase legislators' incentives to more actively monitor military policy.

- **Military interference in politics:** Evaluations of democratic oversight are incomplete without assessments of informal military involvement in politics. Scholars agree that militaries must remain nonpartisan with respect to political forces that act within the constitutional system of government. Favoritism toward particular political factions represents a dangerous deviation from basic military professionalism (Huntington 1957). Latin American history is of course rife with politicized military behavior, and the recent military forbearance regarding coups d'état has not always been matched by restraint in supporting factions or parties in civilian political debates. With respect to internal security, partisan political behavior intended to hinder increases in democratic oversight is a particularly troubling manifestation, precisely because the goal is to place military policy outside the realm of democratic debate. The case studies include multiple examples of military political activities similar to those described in the U.S. context by Brooks (2009, 219): “public appeals” in which officers offer public analysis related to ongoing policy debates; “grandstanding” via resignation or threats to resign; “alliance building,” i.e., forming partnerships with civilian interest groups (such as contractors or retired officers' lobby groups); and “shoulder tapping,” meaning efforts at agenda setting and lobbying within state institutions such as legislatures. While none of these are *prima facie* nefarious—as Brooks notes (225), they can lower the information asymmetry between citizens and politicians—in the

developing country context they often amount to efforts to skirt oversight and may even undermine the principal of deference to civilians.

- **Judicial Accountability:** At the heart of managing all forms of violence, including application of the state's coercive power, is judicial accountability, including both formal legal (*de jure*) accountability and accountability in practice (*de facto*). Latin American security forces frequently operate in contexts of parchment reform, whereby legislation and regulations, often highlighted by progressive goals and best-practices methods and procedures, are enacted into law but not implemented due to incapacity or unwillingness among the relevant state institutions. In the context of internal security policy, scholarly consensus holds that effective oversight requires highly circumscribed military legal jurisdiction. All alleged crimes by the security forces against civilians should be investigated and tried in the civilian justice system, or in the case of countries engaged in peace processes or democratic transitions, in a transitional justice system. Limited military jurisdiction is uncommon in Latin America, however, and militaries fight hard to preserve broader authority. The political battles to clarify boundaries are an important arena for efforts to fortify democratic oversight. The scores I provide for the judicial accountability indicator incorporate *de jure* accountability, but place greater weight on *de facto* accountability: after all, even when the civilian justice system is established as the appropriate forum for investigations of rights abuses, various political factors routinely block the achievement of justice (Brinks 2008; Sikkink 2011—also see next section). Assessing democratic oversight thus requires attention to the incidence of actual prosecutions against members of the security



forces. Indeed, overcoming institutional resistance and deficient state capacity to achieve convictions for rights abuses is both a paramount goal of the oversight coalition and the most visible symbol of the assertion of democratic oversight.

This framework differs substantially from analogous attempts to conceptualize civil-military relations or various subsets thereof. Many of these are impressively ambitious: Barany (2012, 2) seeks “to explain how armies and civil-military relations are transformed to serve democratic rule,” while Pion-Berlin and Martínez (2017, 4) attempt to “contemplate what the entire complex of civil-military relations looks like.” However, they necessarily sacrifice detailed treatment of phenomena, such as militarization, that are specific to certain states. Others, such as Cottey, Edmunds, and Forster (2002) tackle narrower concepts such as “democratic governance” of the military, but this and similar frameworks—especially when addressing the experiences of European countries—often focus on the managerial, technocratic side of civil-military relations. Rather than attempt grand integration, I focus on the components that are most crucial in defining the shape of interactions between civilians and soldiers when the military plays an active role in internal security policy. By adopting this new perspective, my theory better accounts for the empirical outcomes in Mexico and Colombia, in which increased militarization prompts a high-stakes reckoning with forms and levels of democratic oversight.

### **Militarization Challenges Scholarly Expectations**

Existing theories within both civil-military relations and other subfields of comparative politics and international relations have rarely been specifically addressed to militarization. This gap in the literature means there are few if any direct predictions regarding the relationship between militarization and democratic oversight. Nevertheless, many scholars have discussed

internal security roles as a facet of broader analyses of civilian control and coup threats, and the logic of these studies generally implies a strong unlikelihood of democratic oversight improving as military roles expand. Some suggest that internal security threats are correlated with increased military autonomy, in part because they heighten the executive's reliance on the armed forces (Croissant et al. 2011, 91). According to Desch (1999, 15), the combination of high internal threats and low external threats—particularly the situation that characterizes much of Latin America—is particularly conducive to weak civilian control. Consequently, civil-military relations scholars urge restraint in the military's internal security role (Fitch 1998, 192; Barany 2012, 31) and push for greater attention to effective policing in lieu of militarization—clearly implying that militarization is in significant tension with enhanced democratic oversight. Hunter (1996, ix) makes this explicit, stating that “enlisting these armed forces to perform counternarcotics operations, for example, could draw them into other internal tasks, such as intelligence operations, and threaten the region's nascent democratic institutions.” Similarly, Rial (1996, 56) argued that combining police and military roles “runs the risk of eroding the military's professional ethos and of reducing its accountability and subordination to civilian authorities.” In short, the suggestion was that expanding the military's internal role would at best erect barriers to civilian control, and at worst create vicious circles that threatened democracy's unstable foundations.

Some of the few recent studies that directly address the trend toward militarization echo and even amplify these past warnings. Diamint (2015, 166) suggests, for example, that “we could see the rise of a new form of militarism in which the military's handling of domestic security gives it an overweening presence in political affairs.” More commonly, however, subsequent studies countered the fears of scholars writing in the 1990s by noting the paucity of coups in the region, even as militaries were frequently assigned internal roles (Pion-Berlin and Arceneaux 2000; Pion-

Berlin and Trinkunas 2005). As militarization accelerated in terms of both number of countries and size of missions, the lack of direct military intervention induced among some scholars a guarded optimism that verged on complacency. Pion-Berlin suggests, for instance that “the contemporary military has not converted internal missions into political power” (Pion-Berlin 2008, 213). In this view, normative strictures against expanded domestic roles ought to be rethought, since “midlevel threats” (including organized criminals, gangs, and terrorists) are of a sufficient danger that they “challenge the viability of governments” (Pion-Berlin and Trinkunas 2011, 40). These perspectives, however, moved too far toward the other extreme, failing to explore the full range of potential negative outcomes short of military intervention, especially the human rights toll of larger-scale military missions.

One feature of the civil-military relations literature—both the alarmist vein and the more hopeful recent analyses—that limits understanding of the dynamics of militarization is the assumption that civilian leaders in young or fragile democracies generally favor enhanced civilian control. According to this premise, prudence and competing policy priorities may dictate a cautious approach to challenging core military prerogatives, but democratic norms and political incentives impel policymakers to extend the reach of civilian authority (Hunter 1997; Fitch 1998). If this is true, militarization should set the stage for civil-military turmoil: militaries facing sharp personal and institutional risk to fight on behalf of elites perceived as corrupt and incompetent will demand greater resources, operational control, and legal protection from elites who are disinclined to cede authority.

In practice, however, militarization problematizes the assumption. As the case studies show, elected leaders will be highly selective in their assertions of oversight domains. Civilian policymakers may seek to enhance monitoring of resources, but operations and judicial

accountability will remain the preserve of the military. After all, leaders are assigning the military perilous internal missions combatting FARC guerrillas and grenade launcher-wielding drug traffickers, so the primary imperative for elected officials is avoiding military resistance, including literal shirking of the duties corresponding to the mission. Knowing this, military officials are apt to portray impingements on operational autonomy as deleterious to the mission, and constraints on military justice as injurious to military discipline and esprit de corps. For policymakers, meanwhile, the need to maintain public and external support provides incentive to downplay conflict within the public security apparatus. The abstract notion that policymakers will naturally seek to increase civilian oversight proves evanescent in such circumstances.

A logical supposition, therefore, is that in contexts characterized by civilian dependence on military involvement in public security, democracy might endure, but any form of deepened democratic oversight of the military is unlikely—and judicial accountability even less so. The flood of prosecutions in Colombia thus poses a striking puzzle, as does, to a lesser extent, the incipient shift toward public and judicial scrutiny in Mexico. Given that elected leaders in each country have staked their electoral fates on visible security improvements, they should avoid policies that might hinder a full military embrace of expanded missions. Military leaders, moreover, deeply resent elites whose governance failures perpetuate widespread rule of law deficits. Professionalism and patriotism compel assent to these missions, but no observer would expect the generals to channel their collective voice into voluntarily soliciting greater scrutiny by discredited civilian institutions. Strong public support for the military as an institution and the perceived need to restore order tend to reinforce this pattern: policymakers will hesitate to push policies that incur the wrath of a comparatively popular entity. Even the objectionable side effects of militarization—potential corruption, politicization, and rights abuses—are abstract concerns for

most citizens, while the public security threat remains very real. Under circumstances so unpropitious for increased oversight and accountability, then, why did so many Colombian soldiers end up behind bars? How did the even more insulated Mexican military find itself embroiled in highly public disputes regarding its role and behavior?

### **Civil Society Actors and Disruptive Contestation**

A key proposition of this study is that militarization shifts the axis of conflict away from the presidential-military relationship. What actor substitutes for the presidency as the military's primary foil in these contexts? Human rights organizations, which are invariably the central foes of militarization policies. The mere proposal of internal military deployments prompts rights advocates to argue that military training, by its very nature, is likely to lead to widespread human rights abuses (Inter-American Commission on Human Rights 2009, 39-40; Withers et al. 2010). When violence of disputed legality inevitably occurs, actors within the region's deeply-rooted human rights movement are catalyzed into action—and given that Latin American rights movements were forged in the crucible of Southern Cone military dictatorships and Central American dirty wars (Sikkink 2011), the military is a familiar adversary.

The voluminous human rights and judicial behavior literatures that catalog the assertion of rights claims highlight several crucial elements necessary for understanding militarization's unexpected effects. First, studies aptly identify activists operating at both the domestic and international levels as the crucial actors in contesting rights violations (Keck and Sikkink 1998; Kim 2012). Second, they establish the mechanisms of international pressure, notably “shaming” of rights-abusing states and the use of material leverage to encourage states to improve their practices (Franklin 2008; Murdie and Davis 2012), as well as the use of international treaties

pertaining to human rights to spur agenda setting and strategic litigation in domestic and international courts (Hathaway 2002; Simmons 2009). Third, they help illuminate the mechanisms, especially informational exchanges, that influence levels of action or inaction by lower-level officials, particularly prosecutors and judges (Brinks 2008, Michel and Sikkink 2013, Gallagher 2015).

Each of these mechanisms is discussed at length in the empirical chapters that follow. However, most of the existing literature would not anticipate effective assertion of citizen rights claims against the military. Indeed, recent human rights studies acknowledge that ongoing domestic security threats and powerful “pro-violation constituencies” (which certainly include the military) tend to suppress the probability of prosecutions for abuses (Cardenas 2007, 27-31). Likewise, Lupu (2013), suggests that domestic courts are hard-pressed to overcome informational deficits to achieve compliance with treaties banning extrajudicial executions and other violations of “personal integrity rights.” Meanwhile, the durability of constructivist theories such as the “spiral model” of rights adoption (Risse-Kappen, Ropp, and Sikkink 1999), in which observed respect for rights ultimately hinges on state actors internalizing progressive norms, proves fragile when the military and civilian elites are under severe political pressure. Finally, compared to analyses of prosecutions of high-level officials in post-transition states such as Chile, Argentina, Peru, and Guatemala (Sikkink 2011, González Ocantos 2012), militarization, presents an even *more* challenging environment for prosecution, since military leverage should be waxing rather than waning.

In short, I draw on the mechanisms described in existing scholarly literature, but my argument that actors can use strategic behavior to undermine an equilibrium of high military autonomy runs contrary to existing expectations. What civil-military relations scholars have taken

inadequate account of is the ways in which the age of human rights has exacerbated commitment problems that directly affect the management of civil-military relations. In the context of militarization, both the executive and the military suffer from incomplete information—specifically, an inability to predict how disruptive human rights activists will be to any attempt at establishing a civil-military equilibrium. Absent such information, it is difficult for civilians to credibly commit to a high-autonomy equilibrium, producing mistrust between the military and civilian leaders. When this mistrust is sufficiently strong to open rifts in the pro-military coalition, space opens for increased oversight.

Reviewing previous studies also helps illuminate why judicial accountability is the most neuralgic point of civil-military contestation—and consequently the key focus of this study. I contend that in the context of militarization, multiple incentives channel conflict toward the issue of legal accountability. This focus comes partly at the expense of other important dimensions of civil-military relations. For instance, role norms among civilian policymakers and civil society members’ lack of expertise regarding military operations empower the “experts” (Dargent 2012) in violence and dissuade civilians from concentrating on control of military field operations. Deficits of both transparency and expertise among both legislators and civil society members hinder a focus on monitoring budgets. Personnel choices garner somewhat more attention, but as Chapter 3 notes, evaluation criteria from civil society actors are strongly linked to officers’ human rights records—i.e., they are endogenous to judicial accountability concerns.

More importantly, there are both normative and practical reasons for the status of accountability—in the guise of prosecutions—as rights advocates’ primary demand. Normatively, it is a core issue of justice, with both retributive and deterrent components. On the practical side, demanding accountability is comprehensible and observable. No specialized expertise in military

matters is necessary to interpret investigative and prosecutorial outcomes. If civil society actors successfully shift the accountability locus from military to civilian courts, trial outcomes are public. Finally, the courtroom is favorable terrain for human rights advocates, as the comparative disadvantage in operational expertise is counterbalanced by legal expertise—and a comparative advantage in navigating international law and the world of transnational advocacy.

Accountability is an equally paramount concern on the military side. Prosecution for human rights violations can result in professional and reputational ruin as well as extended imprisonment. Such prosecutions are also viewed as besmirching the entire institution. Sharp ideological differences between military members and civil society actors heighten the conflict: the military often views civil society critics as apologists for guerrillas and drug traffickers, while civil society groups sometimes perceive the military as the brutal implementers of repressive elite-designed policies. Battles over accountability thus acquire a valence not present along other dimensions of civil-military relations.

Therefore, while previous models would not predict the paradox of militarization, existing studies help establish the key actors and mechanisms that produce and hinder change. With this information, it is possible to propose a framework in which these actors interact with each other and contest the boundaries of democratic oversight.

### **Coalitions and Independent Variables**

Understanding how Mexico's increased contestation and Colombia's improved democratic oversight came about requires examination of the behavior of specific actors, institutions, and organizations as well as the interactions between these actors. At the macro level, these actors can be grouped into two coalitions seeking to alter or maintain the boundaries of democratic oversight.



*The Social Order Coalition:* I label the coalition that includes the key actors prioritizing mission fulfillment over maximal democratic oversight the social order coalition (see Table 2.1), which is fundamentally composed of the military and its allies. The military is generally described as a unitary actor, though this is for simplicity purposes only: factional and institutional differences are quite important at various points and are discussed as appropriate in the case chapters. The military's key ally is the president who initiates a policy of militarization and thereby stakes his political fate on military performance. Legislative and bureaucratic allies, particularly members of the president's party or bloc but also including other—usually conservative—law and order-promoting politicians and officials are another key source of support. Law-and-order civil society organizations help amplify the social order coalition's message. Finally, these domestic actors enjoy the support of sympathetic foreign officials, particularly within the U.S. government. In the case of Mexico and Colombia along with other Latin American states, this includes most interlocutors at the Department of Defense and the Drug Enforcement Administration, along with Republican (and some Democratic) members of Congress.

The key preference of this group is a prioritization of mission fulfillment over strict democratic oversight. Civilian members of the coalition may or may not actively sympathize with the military's preference for maximal autonomy, but given their political "ownership" of militarization, they will facilitate military efforts to limit oversight. Coalition members exert influence on the level of accountability through both action—especially public defenses of military conduct and pro-military legal initiatives—and omission, most notably failing to prioritize punishment of the military for noncompliance with the law. When abuses are denounced, members of the social order coalition publicly valorize the military and denigrate its alleged enemies as criminals or subversives. Foreign officials echo these sentiments, and vocally reaffirm the support

of foreign countries (again, usually the U.S.) for militarization's goals and policies. Analogous to domestic coalition members, these foreign officials extend material inducements to maintain and increase the effectiveness of hardline militarization policies, while blocking the efforts of opponents who would deny or condition such assistance on increased democratic oversight.

TABLE 2.1: SOCIAL ORDER AND OVERSIGHT COALITIONS, 2002-2017

	<b>Social Order Coalition</b>	<b>Contingent</b>	<b>Oversight Coalition</b>
<b>Militarizing Administration</b> (Uribe, Calderón)	<ul style="list-style-type: none"> <li>-President (Uribe, Calderón)</li> <li>-Military (active and retired)</li> <li>-Anti-guerrilla civil society</li> <li>-Right-wing press</li> <li>-Bush administration (White House/NSC/DOD)</li> <li>-Republican/hawk Democratic members of Congress</li> </ul>	<ul style="list-style-type: none"> <li>-State Department</li> <li>-European governments/</li> </ul>	<ul style="list-style-type: none"> <li>-Human rights NGOs</li> <li>-Left-wing political parties</li> <li>-International NGOs</li> <li>-Dove Democratic members of Congress</li> <li>-IACHR/Inter-American Court</li> <li>-UN human rights bodies</li> </ul>
<b>Policy Inheritor</b> (Santos, Peña Nieto)	<ul style="list-style-type: none"> <li>-Retired military</li> <li>-Domestic congressional hawks</li> <li>-Right-wing press</li> <li>-U.S. Congressional Republicans</li> </ul>	<ul style="list-style-type: none"> <li>-President (Santos, Peña Nieto)</li> <li>-Active-duty military</li> <li>-White House/NSC/DOD (Obama)</li> <li>-State Department</li> </ul>	<ul style="list-style-type: none"> <li>-Human rights NGOs</li> <li>-Left-wing political parties</li> <li>-International NGOs</li> <li>-Dove Democratic members of Congress</li> <li>-IACHR/Inter-American Court</li> <li>-UN human rights bodies</li> </ul>

*The Oversight Coalition:* Seeking to undermine the preferences of the social order coalition is the oversight coalition. The core of the oversight coalition is a set of domestic human rights activists, generally based in nongovernmental organizations (NGOs), who document and call attention to democratic oversight deficits, especially rights abuses. Some of these are local grassroots or church-affiliated groups, while others are professionalized domestic operations based in urban centers. These groups' voice is amplified at the international level by transnational NGOs,

which may be global, bureaucratized operations such as Human Rights Watch and Amnesty International or ad hoc umbrella groups that coordinate the work of concerned grassroots activists. One objective is raising awareness abroad, with a goal of generating citizen pressure on foreign governments to curb militarization and its associated abuses. Another NGO objective is to establish allies within intergovernmental organizations—particularly the Inter-American Commission on Human Rights (IACHR) and committees within the United Nations, in the case of Latin America. Finally, these groups cultivate relationships with a differing set of sympathetic foreign government officials. For most of Latin America, allies within the U.S. Congress (almost exclusively Democrats) are of supreme importance in drawing attention to rights issues. In the case of Colombia, European allies are also a major target of persuasion and mobilization due to historical ties with the Colombian left (see Chapter 3).

The foremost priority of these groups is to halt abuses and reverse the policies that perpetuate them. Pressuring the domestic government to rein in or replace abusive military officers and deter future misdeeds by punishing soldiers and officials is the most urgent task, but lobbying to create more enduring oversight mechanisms is a key secondary objective, especially within the domestic legislature and bureaucracy. At the international level, oversight coalition members attempt to persuade powerful states to impose conditions on security assistance and economic links such as free trade agreements (Krasner and Weinstein 2014). In doing so, they attempt to harness the force of shame (Franklin 2008, Anaya Muñoz 2012; Murdie and Davis 2012) on the part of both domestic militarization supporters and officials in foreign states (primarily the U.S.) who abet the military's expanding internal security role. The basic strategy is to increase foreign pressure and activate international legal mechanisms. Ideally, this pressure will tip the balance in favor of more debate about militarization at home, improved judicial outcomes, and the establishment of

veto points against backsliding should nascent improvements in democratic oversight begin to take hold.

Finally, I characterize several key entities as *contingent*—at the core of neither the social order coalition nor the oversight coalition. These actors shift their support back and forth between the two coalitions, depending on their policy goals and the pressure mounted by members of the two coalitions. The most important contingent figure is the *policy inheritor* (see below), the successor to the president who initiated militarization. Another key contingent entity is the U.S. executive branch, which prioritizes smooth bilateral relations but is also susceptible to pressure by the oversight coalition, especially if allies of rights advocates gain strength within Congress. The State Department is the final contingent actor. Officials within the agency will not expressly violate White House dictates, but diplomats have significant autonomy in the day-to-day management of bilateral relations, and seemingly minor changes (from the perspective of the White House) in diplomatic emphases can be important in agenda-setting or (dis)empowering specific actors.

With this background, the crucial independent variables tracked throughout the study can be specified. First is the *level of international reform pressure*, which depends on two factors: first, the degree to which domestic activists and their transnational allies prioritize democratic oversight (as opposed to other rights issues); and second, the degree to which their criticisms are echoed and reinforced by supranational organizations and foreign governments. The most powerful tool is material leverage in the form of conditions placed on security assistance or trade cooperation, but sustained and public shaming by foreign governments and supranational organizations can also be a source of substantial reform pressure. When international actors neither condition material assistance nor explicitly address issues connected to democratic oversight in high-level forums, international reform pressure is low. When shaming is a frequent feature of bilateral relations but

few conditions are placed on material assistance, international reform pressure is medium. When both shaming and conditionality are wielded by assistance-providing states and organizations, international reform pressure is high.

The second key independent variable is the *strength of the social order coalition*—whose existence pre-dates militarization, but becomes more fully articulated as the policy takes shape. Strength is affected most dramatically by the relationship between the president and the military command. The military’s preference for maximum autonomy is constant, although officers may accept strategic concessions, such as personnel changes and acceptance of isolated prosecutions—of soldiers and junior officers, not the high command—in civilian courts. Executive preferences, however, are contingent. A key distinction is between the “militarizer,” i.e., the president who initiates a policy of militarization and is unlikely to break with the military, and policy “inheritors” in subsequent administrations, whose preferences may diverge from both the military and the militarizers. Importantly, the appearance of a fracture in the social order coalition under policy inheritors is not merely endogenous to international pressure; rather, it is tied to the availability of a *policy alternative*. For instance, as the Colombia chapters note, President Santos’s decision to pursue a peace process threatened the military and Uribe’s political coalition, generating an acrimonious split. In Mexico, a (weak) emphasis on police professionalization created a temporary decline in violence, setting the stage for decreased executive dependence on the military.<sup>4</sup>

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<sup>4</sup> To note an additional paradox, battlefield success can pose a risk to military autonomy: a dampening of the guerrilla threat that prompted militarization helped stimulate the pursuit of Colombia’s peace process.

## **Sequence of Events**

An additional proposition of this study is that expanding the military's internal security role precipitates a stylized sequence of events involving the actors and variables described above. In the first step of the sequence, soldiers arrive on the "battlefield" subject to a baseline, historically-determined level of democratic oversight. Consonant with standard military practice, soldiers are well trained to neutralize threats via the use of overwhelming force, but less schooled in non-confrontational interaction with the civilian population. In a case like Mexico, they may find themselves facing narcotraffickers in possession of military-grade weaponry yet wearing civilian clothing, moving freely within superficially normal social environments. Troops on counterinsurgency missions, meanwhile, encounter both highly trained opponents and a network of noncombatant support structures. As mentioned above, the pressure to deliver measurable results, combined with the difficulty of distinguishing civilians from combatants, frequently inadequate training, and weak deterrence produced by a history of impunity, have resulted in frequent human rights violations in states where public security has been militarized.

The second phase implicates the state response: military commanders tend to exhibit reflexive solidarity with accused soldiers, arguing that actions were appropriate and, even if not, that investigation and punishment of "rotten apples" is the province of internal military disciplinary and justice systems. Executive branch leaders prioritize mission continuity over redress of victims' grievances, let alone interest in changing institutional structures. Other civilians, including members of the legislature, officials in state agencies, and civil society members, echo the executive-military position. These actors thereby reveal their alignment with the social order coalition. On the other side, human rights groups mobilize to collect information about abuses,

publicize patterns of military misdeeds, and build alliances with other concerned actors, including religious leaders, media figures, and a differing set of politicians. Within this oversight coalition, the immediate necessity is to stop abuses and deter future ones. Worthwhile but comparatively technical issues like doctrine and budget transparency tend to recede into the background of the oversight coalition's agenda.

As attention to alleged abuses increases, the executive and military establish a more rigid posture. They deny the gravity of alleged rights violations, defend the military's role, and tar opponents as unpatriotic "useful idiots" or active collaborators with malevolent actors seeking to undermine the state. Resistance to reforms is abetted by the regionwide deficit in security expertise among both civil society members and elected officials, and the deference to the generals it reinforces (Pion-Berlin and Trinkunas 2007). With domestic institutional channels of contestation occluded, the oversight coalition pursues international support to induce a "boomerang effect" (Keck and Sikkink 1998). This international mobilization manifests in overlapping legal and political forms. Rights advocates wield treaty obligations and international human rights law to pursue binding rulings that hold states liable for insufficiently remedied violations in venues such as the Inter-American Court of Human Rights. They also enlarge the coalition through political alliances with foreign government lawmakers and officials, functionaries in supranational organizations such as the UN, and counterparts in high-credibility transnational organizations like Human Rights Watch.

Depending on organizational efficacy and domestic vulnerability to international leverage, transnational mobilization may generate tangible pressure on militarizing states. In Mexico, for instance, a series of Inter-American Court rulings judging Mexico's military justice system to be in violation of treaty obligations increased pressure for changes to the domestic legal framework

despite vocal military objections. The well-articulated oversight coalition dedicated to international advocacy on Colombian rights issues, meanwhile, consistently prompted the U.S. Congress to warn Colombia that unaddressed rights issues would harm bilateral cooperation.

The third and final phase returns the focus to domestic politics and institutions. With additional scrutiny generating increased costs for noncompliance with international norms, politicians must decide whether and how to rebalance the costs and benefits of continued alignment with the military's high-autonomy preferences. All things equal, the civilian leaders responsible for initiating militarization policies will be disinclined to dramatically change the civil-military configuration. Thus, even with high international pressure and a well-articulated oversight coalition, the potential for increased democratic control is truncated. In some cases, however, the passage of time brings new presidents to office, raising the question of whether these "policy inheritors" will continue their predecessors' policies. If proposed changes—which only occur when a policy alternative appears that lowers executive dependence on the military—are sufficiently far-reaching, the cohesion of the social order coalition may be broken, and the horizons of potential reform broaden.

In Colombia, President Juan Manuel Santos's decision to aggressively pursue a peace process with the FARC presented an alternative future of less dependence on the military, giving him leverage in negotiating resolution of the thousands of outstanding abuse complaints against the Colombian military. Judicial actors took this as a cue that the military should not receive special protection from culpability for criminal acts, opening the gates to over 1000 murder convictions before the initiation of a transitional justice process in 2017 disrupted judicial proceedings. In addition, other facets of democratic oversight slowly increased as well; while legislators remained secondary players overall, some members of congress became more vocal about the need to apply



democratic norms to the military. Strong de jure oversight was maintained, and even civilian expertise grew, in part because of the need for rights advocates to gain sophistication about the battlefield in order to more credibly contest military claims regarding disputed deaths in combat.

In Mexico, conversely, early indications that policy inheritor Enrique Peña Nieto would pursue police reform as an alternative to militarization led to a limited but important military justice reform and a handful of prosecutions for rights abuses. However, hopes that judicial accountability would take root vanished as the murder rate spiked to historic levels and the reality dawned that no viable alternative to militarization existed. In this environment, judicial actors regained their traditional hesitance to systematically impose legal accountability. Legislators remained largely supine, with little attempt to exercise greater monitoring of the military. Civilian expertise remained thin, due in part to the extreme ambiguity of the Mexican “battlefield” as well as Mexico’s relatively low security expenditures relative to Colombia. As of the end of 2017 the military appeared to be accruing power. Nonetheless, over the course of the post-2006 period, the oversight coalition’s efforts had produced deeper dents in military autonomy than any observer would have predicted at the outset of militarization.

These outcomes illustrate a central conclusion of the analysis: as long as militarization remains a foundation of internal security policy, shifts are likely to be contingent and temporary. Extreme outcomes are theoretically possible: at one end, crippling security threats can weaken democracies to the point that regime survival takes precedence over any type of effective democratic control. At the other extreme, successful embrace of a policy alternative that eliminates the original impetus for militarization ideally might lay the groundwork for a new, more democratic civil-military equilibrium. In general, however, dynamics established during the period of militarization-induced disequilibrium are not easily remedied, even in otherwise promising

scenarios. In Colombia, for instance, a peace process removed the most alarming (though hardly sole) internal security threat, but military politicization stemming from battles over judicial accountability perpetuated unstable civil-military relations. In Mexico, meanwhile, security deterioration raised the specter of more intensive military operations and continued polarization over the issue.

## **Research Design**

This dissertation provides insight into the dynamics of militarization and contestation of military autonomy in two substantively crucial cases. In so doing, it exploits both within-country and cross-country variation to draw explanatory power.

This study attempts to follow in the rich tradition of studies of Latin American civil-military relations. Most research within the subfield is qualitative and descriptive rather than quantitative and causal, for understandable reasons: it is difficult to operationalize and measure civil-military relations in a sufficiently precise way to allow for standardized classification across countries, and therefore facilitate large-N analysis. Moreover, while the civil-military relations effects of dictatorship and democratization have been frequently addressed, the specific effects of militarization rarely been studied. Given the nascent nature of research in this area, there is no extant model that this study seeks to confirm, disconfirm, or refine. Thus, in accordance with the typologies suggested by Beach and Pedersen (2013) and Gerring and Cojocaru (2016), the study is largely exploratory and theory-building. In line with most studies in the subfield, I prioritize maximizing internal validity—that is, accurately explaining the cases. However, the study also aspires to maintain a variable- and mechanism-oriented approach that gives the model enough

external validity to lay the groundwork for expansion and comparison as it is refined in future studies (Beach and Pedersen 2013).

The case selection balances several criteria. One is practical: Mexico and Colombia are the two largest-scale cases of militarization in the region, with dramatic effects on patterns of violence in each state. Therefore, understanding how these policy shifts affected civil-military relations in general, and democratic oversight specifically, is of intrinsic importance. On a more theoretical level, the cases are examples of several overlapping selection strategies. Colombia was the initial case selected due to its enormous variation with respect to the dependent variable, i.e., the wave of murder prosecutions as a manifestation of increased democratic oversight. It is thus an example of what Gerring (2017) terms an *extreme* or *outcome* (Gerring and Cojocar 2016) case that maximizes variation on *Y* and allows researchers to assess a variety of potential causes—while bearing in mind the case’s potentially unrepresentative nature (Seawright and Gerring 2008).

Mexico was initially selected, conversely, on the basis of a lack of variation on *Y*. Given the shared history of militaries that refrained from coups in exchange for autonomy, vigorous human rights mobilization, and a sharp, rapid expansion of the military’s internal role, this was intended to facilitate a most-similar systems comparison (Lijphart 1971). Research and time unraveled this strategy, in two senses. First, in-depth field research revealed substantial differences from Colombia regarding relevant factors ranging from institutional structure to vulnerability to international leverage. Second, during the course of research Mexico exhibited previously-unexpected variation on *Y*, i.e., moderate—though truncated—improvement in democratic oversight.

While complicating the initial design, these changes provided additional within-country variability to complement the cross-country variation. Given the range of values on both the

independent and dependent variables across time, Mexico and Colombia represent *diverse cases* (Gerring and Cojocarú 2016; Gerring 2017). In such cases, scholars sift through a wide range of background conditions and values of the variables to identify causal hypotheses. By configuring the various combinations of variables across time, researchers can construct theories as to the identity of the most critical factors. Through this process I accumulated knowledge and evidence for my central proposition: that focused international pressure regarding military accountability and a fracturing of the social order coalition are the two key necessary conditions for a significant increase in democratic oversight.

The project harnesses comparative leverage. This mainly pertains to the most obvious distinction between Colombia and Mexico—the wave of prosecutions of rights-violating soldiers in Colombia, which has no analogue in Mexico. While the overall study is characterizable neither as a most-different nor a most-similar systems approach, the logic of most-similar systems does apply to the judicial accountability portion of the analysis. In each country militarization led to a rise in allegations of human rights abuses. In both countries, a tacit civil-military equilibrium was undermined by the mobilization of international pressure, which generated sufficient pressure to change the executive’s cost-benefit calculations with respect to keeping prosecutions of soldiers in military courts. However, very few prosecutions occurred in Mexico, while they became routine in Colombia. In line with most-similar systems design, the study identifies a single key distinguishing factor—the fracturing of the social order coalition—that facilitated the opening of Colombia’s prosecutorial floodgates.

Throughout the analysis I use process tracing to identify and explain causal mechanisms (Blatter and Haverland 2012; Gerring 2017). The study provides a complete causal chain, with thick analysis of temporal sequencing, actor perceptions, and structural forces used to not only link

militarization to differing outcomes in terms of democratic oversight, but also explain why contention focuses on judicial accountability as a specific dimension of democratic oversight. Overall, the study is designed to provide an accurate, internally valid historical narrative in each case, but highlight key variables in a way that provides generalizability across democracies experiencing the phenomenon of militarization.

One reason for the scarcity of scholarship on militarization is the difficulty of obtaining data. Developing country military members are notoriously reticent about talking to analysts, particularly with respect to contentious issues and illegal acts such as human rights abuses. Moreover, these decisions are generally made autonomously: civilians generally lack the impulse to force militaries to open themselves to outside scrutiny. Thus, researchers must exploit a wide variety of military-related sources, including speeches, internal analyses such as military magazines, and media reports by the few journalists specializing on the topic. For this study, the difficulty of accessing military sources was somewhat alleviated by the fact that many of the military's preferences are treated as constants, with the decisions of civilian elites exhibiting more dynamism. Moreover, these elites' decisions are made not just in line with military preferences but also on the basis of activist strategies.

Therefore, data collection for the project followed a wide-ranging strategy. Fieldwork totaled roughly 13 months, with over six months in Mexico City, five months in Bogota, and two months in Washington, D.C. Approximately 90 semi-structured interviews were conducted with current and retired military officials, civilian policymakers from both the executive and legislative branches in multiple administrations in all three countries, and both domestic and international activists. Numerous informal conversations also contributed enormously to my understanding of civil-military dynamics that are often opaque even to participants. Finally, I used thousands of

press articles, government documents, and NGO and think tank reports to try and accrue concrete data about institutional dynamics, legal changes, and prosecution processes as well as to generate a more holistic understanding of the shifting pressures and strategies of various actors.

## CHAPTER 3

### COLOMBIA: MILITARIZATION, POWER, AND SCRUTINY

#### Introduction: Autonomy and Activity

The history of civil-military relations in Colombia is laden with paradoxes. Colombia has one of the most sustained track records of civilian-led democratic government in Latin America, but successive administrations outsourced management of security to the military—one of the country’s least accountable institutions. The armed forces once led efforts to defuse insurgency through civic-military action—but since the 1980s, the generals have repeatedly exerted direct political pressure to hamper peace processes intended to bring order to the countryside. In recent years, the military has faced unprecedented impositions on its traditional autonomy—just as it achieved its greatest battlefield gains. Unlike Mexico, there is little debate about the basic legitimacy of the military’s internal role: a national consensus has long existed that the internal armed conflict that has plagued the nation since the 1960s necessitates the application of military force. Yet the boundaries and forms of the application of that force have been highly contested, never more so than over the last decade. Why did the military’s power and prestige fail to protect it from increased oversight, even amid severe, persistent security threats?

Colombia’s most recent period of military government ended in 1958. From that point forward, civil-military relations partially resembled those of Mexico. Both the phrase “subordinated autonomy” and the concept of a civil-military “pact” have been applied, just as in Mexico. Differences abound, however. Whereas post-World War Two Mexico featured a strong, unified state that relied only sporadically on the military to fulfill its “residual political role” (Ronfeldt 1976, 294), Colombia was (and is) a fragmented nation, divided into regional power centers, with central government authority merely notional in large swathes of the territory. The

military was able to contain potential existential threats to the state, but the least secure regions often had little other government presence, leaving the military to develop deeply ingrained, often abusive patterns of behavior with few checks.

Until the late 1970s, the arrangement was manageable for Bogotá elites, but during the 1980s and 1990s centrifugal forces threatened to disintegrate state authority entirely. In the 1980s, elites finally began to seek comprehensive solutions to the endemic disorder, only to discover that elite and military notions of conflict management had drifted significantly apart. After several stunted peace efforts, elites—with a significant push from the U.S.—decided at the end of the 1990s to greatly expand the military's role in the conflict. Starting in 2000, the Colombian military underwent a massive expansion and modernization effort, with civilians negotiating a vast package of U.S. security assistance and formulating security policies designed to reassert state authority over territories occupied and brutalized by left-wing guerrillas and right-wing paramilitaries. In 2002, the ascension of Álvaro Uribe to the presidency marked the beginning of an era of tight alignment between the president and the armed forces. The ideological marriage was reinforced by battlefield success that bestowed public opinion glory on the president and the generals alike.

Yet a shared perspective and goals did not protect the military from increased pressure to accept democratic oversight. As in Mexico, militarization brought a torrent of resources but also unprecedented attention. Even as *Uribismo* (as the Uribe-led political coalition was known) remained dominant, civilians within the Ministry of Defense faced off with military commanders over management of resources and operations. In 2008, revelations of widespread, systematic extrajudicial executions—and the intense international scrutiny they generated—produced an imbalance in the delicate civil-military equilibrium. Although the 2010 election elevated a close Uribe ally, Juan Manuel Santos, the new president opted to pursue an ambitious peace process



with the country's main insurgent group, the Revolutionary Armed Forces of Colombia (FARC), in the face of strong reservations from the military and Colombia's Uribe-led social order coalition. Meanwhile, hundreds of soldiers were convicted in civilian courts for homicide and other grave rights abuses. In the absence of a unified social order coalition, and given sustained domestic and international pressure to prosecute rights abuses and resolve the conflict, the Santos administration's repeated efforts to forge a new civil-military equilibrium proved difficult.

How was an ongoing, expansive mission compatible with increased democratic oversight? As the framework described in Chapter 2 contends, expanding military missions aligns civilian and military interests but also generates tensions. Uribe's demands for results and the monitoring that accompanied large-scale U.S. security assistance generated more civilian presence within the military, limiting military autonomy. Those demands for results also, however, had a direct relationship to the epidemic of human rights abuses—which brought attention to longstanding oversight coalition grievances with military behavior. As my argument suggests, increased democratic oversight is more likely when international pressure can be brought to bear on militarizing states. Because of the importance of the U.S. relationship to Colombia's top civilian leaders, the oversight coalition gained leverage over state policies. In addition, the inheritor of the militarization policy, President Santos, embraced a policy alternative: a peace process. The fracture this created in the social order coalition opened political space for judicial institutions to proceed with a bevy of prosecutions. Both the armed forces and Colombia's social order coalition retained significant influence, but the balance between democratic oversight and military prerogatives shifted toward oversight.

This chapter offers a broad sweep of the evolution of democratic oversight in Colombia. In the first part, I will outline the evolution of civil-military relations in the post-World War Two

era, including increasing strains on both the state and the civil-military “pact” as threats to state authority mounted. By the late 1990s, both state authority and civil-military relations had reached a nadir; thus, in the second section I will describe the state’s response to the security crisis, which included simultaneous efforts to forge a peace agreement and a major military rearmament effort. Starting on the eve of the Plan Colombia security assistance package in 2000, I will score the core components of democratic oversight as Colombia’s aggressive militarization of internal security got underway. The third section will examine the Uribe era, in which the overriding demand for results drove a reconfiguration of the executive-military relationship. The fourth section assesses the reasons why President Santos was unable to establish an equilibrium with the military and describes the tumultuous period of civil-military relations that followed. The analysis in this chapter focuses on the complexities of the presidential-military relationship and the dynamics of military political machinations, with additional analysis of other forms of civilian engagement. Given the importance of judicial accountability to the overall arc of civil-military relations, that dimension will be discussed as well, but a more detailed examination of Colombia’s anomalously high level of military prosecutions is carried out in Chapter 4.

TABLE 3.1: TIMELINE OF MAJOR EVENTS: COLOMBIA

Year	Event	Significance
1958	Lleras Pact	President-elect Alberto Lleras Comargo elaborates a civil-military “pact” exchanging military subordination for autonomy
1964	Formation of FARC	Military offensive against “independent republics” prompts creation of Revolutionary Armed Forces of Colombia (FARC)
1978	Security Statute	Decree increasing military power produces rising rights abuses
1981-82	Paramilitary Era	Formation of first paramilitary groups, with military assistance
1985	Palace of Justice Siege	End of peace process; reassertion of military influence
1991	Constitution of 1991	Democratization of Colombian governance structures leaves military power relatively intact
1998	Peace Process	President Pastrana initiates ill-fated peace process that underscores need for military modernization
2000	Plan Colombia	Initiation of major military-focused U.S. assistance package
2002	Election of Álvaro Uribe	Military offensive expands; demands for military results issued
2003	Marta Lucía Ramírez resignation	Uribe’s first minister of defense resigns after resistance by military brass to more aggressive civilian oversight
2006	Ministry of Defense Appointment	Juan Manuel Santos appointed Minister of Defense
2008	Media Revelations and Military Firings	“False positives” military murder scandal becomes public knowledge, resulting in firing of 27 officers
2010	Election of Juan Manuel Santos	Internationalist president Santos elected; alignment of president with social order coalition weakened
2012	Peace Process	Government-FARC peace process becomes public
2013	Intelligence Leaks reports	News reports of military intelligence links to Uribe highlight opposition within military to Santos policies
2014	Santos Reelected	Santos narrowly reelected over Uribista/social order coalition candidate; Uribe elected to Senate
2015	Open Discontent	Soldiers at military race display open discontent by booing President Santos
2016	Peace Plebiscite Fails	Attempt to legitimize peace accord fails after social order coalition campaign
2016	Peace Accord Signed	Government and FARC sign final peace accord, including transitional justice process

## **Civil-Military Relations Take Shape: La Violencia, the Lleras Pact, and Security**

### **Deterioration**

#### *The 1950s: Partisan Violence and the Military in Power*

In 1950 Colombia was a country at war. Surprisingly, however, the Colombian military played a secondary role in the intense conflict occurring throughout the countryside. Rather, the violence was largely carried out by the police, paramilitaries, and bands of resisters aligned with the two major parties, the Liberals and the Conservatives (Atehortua and Vélez 1994). *La Violencia*, as the 1948–1958 period was known, laid the groundwork for definition of the military's modern role, though only indirectly. By 1953 the situation had become untenable from the perspective of Bogotá-centered elites, and the “gentlemen” factions of the Liberals and Conservatives agreed to place General Gustavo Rojas Pinilla in the presidency. Although the Rojas Pinilla government was not a mere caretaker, neither did it operate like later analogues in Latin America. Unlike Brazil or Peru of the late 1960s, no carefully elaborated developmentalist ideology existed. Given the goal of reducing violence, an amnesty was issued to participants from all sides, though in a nod to increasing security cooperation with the U.S., the Communist Party was outlawed (Kirk 2003, Chapter 2). The violence reduction was only partially successful, and by 1957 popular discontent resulted in Rojas Pinilla's replacement by a temporary junta, whose main task was overseeing the transition to a democratically-elected government.

The arrangement formalized by the 1958 election, known as the National Front, was based on a strict division of power between the two parties, with equal representation in public posts, starting with Liberal Alberto Lleras Camargo in the presidency. Even prior to his accession, Lleras gave a speech at the National Theater in which he famously stated that “I don't want the armed

forces deciding how the nation should be governed...but nor do I want, in any manner, politicians to decide how the armed forces should be managed in their functions, discipline, rules, and personnel” (Vargas 2006). The “Lleras Pact” became the touchstone of civil-military relations in Colombia for decades, though its significance was partly mythological. Civilians were supposed to remain aloof from the domain of public order, but they remained responsible not only for determining the level of resources received by the military but also signaling preferences regarding the targets and methods of military force (interview with Ortiz, 2015). Nonetheless, the pact established a pattern that would serve both civilians and the military for several decades.

#### *The 1960s and 1970s: Insurgency, Doctrine, and Consolidated Autonomy*

The gradual evolution from partisan to ideological warfare meant that the Cold War started “later” in Colombia than in other areas of the developing world. By the time sustained attention to the insurgent threat became a priority in the early 1960s, the military had theoretically been depoliticized with respect to partisan politics. That did not, however, signify an apolitical army—on the contrary, the armed forces embraced a version of the National Security Doctrine (NSD), a synthesis of various approaches to geopolitics, counterinsurgency, and national development (Pion-Berlin 1988). The NSD is inherently, strongly ideological, and its acceptance by both civilian elites and the military signaled a central paradox of the Lleras Pact during the National Front period: a supposedly apolitical military implementing an intrinsically political doctrine (Borrero 2006, 114). The NSD is also deeply associated with the U.S., which assiduously promoted the application of its principles throughout the Cold War. Colombia was an early focus of American efforts. By the early 1960s, soldiers who had fought with U.S. troops in Korea were rising in the ranks, providing a network for cooperation with U.S. counterinsurgency ideas (Kirk

2003, Chapter 3; Leal Buitrago 2006). A cadre of progressive officers in the 1960s, led by General Alberto Ruiz Novoa, even attempted a small-scale hearts-and-minds program to draw rural areas away from the scattered Marxist bands circulating in the mountains in the 1960s. Among its elements was the creation of “self-defense forces,” which were first included in Colombian law in 1965 and were formalized in 1968. The name of Ruiz’s program, Plan Unity (*Plan Lazo*), symbolized the idea of drawing the military and the peasantry together (Kirk 2003, Chapter 3).

As in most other developing country Cold War theaters, the plan was shelved in favor of more repressive policies. Under Conservative president Guillermo Valencia (1962–1966), the military took the advice of U.S. advisers and opted for direct attacks on the “independent republics” containing leftover resisters from La Violencia as well as nascent communist movements. In 1964 a major attack on the main communist redoubt at Marquetalia sparked the organization of what would become Colombia’s main insurgent group, the FARC. During the next decade, however, the threat remained small and contained: guerrillas numbered in the hundreds, and mainly kept violence out of the major cities (Leal Buitrago 2006). The 1960s and early 1970s thus represented the peak period of both the National Front and the Lleras Pact, and civil-military relations were relatively placid.

#### *President Turbay and the Security Statute: Unleashing Military Power*

By the mid-1970s the situation was changing. Slow growth of the communists in the bush was complemented by the emergence of a strictly urban group, the M-19, in 1974. Meanwhile, military leadership transitioned from Ruiz Novoa’s disciples to a far more hawkish clique led by General Luís Camacho Leyva (Kirk 2003, Chapter 3). A massive strike in September 1977 revealed both the depth of discontent among young urban Colombians and the military’s

increasingly rigid suspicion of dissent. President Julio César Turbay, a Liberal elected in 1978, was (prior to Álvaro Uribe) perhaps the president most tightly aligned with the military. Rather than address dissenters' grievances, however, Turbay unleashed Camacho's military. In September 1978 he decreed the Security Statute, allowing for vastly enhanced martial powers. The task of implementation was delegated to the military, which, in addition to its expanded policing role, was empowered to try civilians in military courts. Enforced disappearances, arbitrary detentions, and systematic torture spiked immediately. Hundreds of civilians were tried and sentenced in the opaque military court system (Guerrero, Gallón, and Santana 1982). Observers even suggested that the military was the true national power, as per the editorial cartoon in Figure 3.1:

FIGURE 3.1: 1979 EDITORIAL CARTOON



*Reporter: "And regarding the possibility of a coup—what can you tell me?"*

*General Luís Camacho Leyva: "I don't think [President] Turbay would dare!"*

*Source: El Espectador 2016*

Unleashing the military, however, did not constitute a coherent security policy. Some members of nonviolent left-wing parties viewed the indiscriminate military response as a signal that the peaceful route to political change was closed, and joined the FARC and M-19. Several

additional factors helped boost the guerrillas, even under military duress. First, by the end of the 1970s drug trafficking had started to join kidnapping as a lucrative source of revenue for nonstate actors (Dudley 2004, 52). Second, the M-19 in particular achieved several propaganda coups—most impressively, the tunneling into Cantón Norte, the Army’s primary base in Bogotá, and stealing over 5000 weapons in December 1978. This humiliation added to the M-19’s mystique, and further enraged the military, which responded with a significant increase in detention and torture in Bogotá (Aranguren 2016, Chapter 6). In sum, the contradictions inherent in delegating security policy to the military became increasingly apparent during the Turbay administration. In the meantime, however, the administration had empowered military hardliners like Camacho and another top commander, General Fernando Landazábal, which would complicate efforts to switch tacks from a military solution. Meanwhile, the increase in both illicit revenue and guerrilla mystique inhibited a swiftly completed military mission and set the stage for clashing priorities and increased civil-military friction.

### *The 1980s: The Military as Powerful Spoiler*

As posited by the framework in Chapter 2, the pursuit of policy alternatives to militarization can cause rifts in the social order coalition. Although genuine military accountability was inconceivable in the early 1980s, Colombia already had a social order coalition centered on conservative politicians and business figures, rural landowners, and the military. The anticommunist, anti-guerrilla, peace-skeptical stance adopted in this period initiated a pattern of military resistance to civilian direction that persisted into the more recent era this dissertation is focused on.



Challenges to the state gained force during the 1980s, the decade in which Colombia achieved international notoriety as a setting for both opulent indulgences and heinous brutality. The increasing gap between the effectiveness of security and development policies and the structure of challenges to state control was visible in the rise of Pablo Escobar and the Medellín Cartel to fame, the early phase of the paramilitary expansion across the countryside, and kidnapping as a specter of daily life in both city and countryside. The cinematic drama that characterized the country encompassed civil-military relations as well. Under President Belisario Betancur, elected in 1982 as an unorthodox Conservative Party candidate, the Pact came under greater strain than at any time since 1958. Betancur was clear throughout the campaign that a negotiated peace was his priority, which would require a series of decisions that necessarily transferred to civilians some of the military power acquired under Turbay. As part of the bold initiative, an amnesty law intended to jumpstart talks with guerrillas passed Congress late in 1982. The decision generated fury among the armed forces, as ingrained anti-guerrilla ideology merged with the wounded pride from seeing guerrillas roaming free after the humiliation of Cantón Norte. The military was hardly the only sector in Colombia that opposed the talk. Other opposition was expressed by landowners and business groups—i.e., the natural focal points of Colombia's social order coalition (Vélez and Atehortua 1993, 260). In November 1982 military chief commander Gustavo Matamoros rejected the idea of limiting military movements (*El Tiempo* 2007), while Minister of Defense Landazábal—perhaps the most publicly vociferous advocate of a military-centered solution—thundered against the peace talks (Dudley 2004, 38). Landazábal was finally forced out in January 1984, but by that time the depth of civil-military discord on the president's highest-priority initiative was established.

A civil-military crisis that cast an even greater pall over Betancur's efforts, however, was one of the most controversial episodes in Colombian history: the takeover of the Palace of Justice in November 1985 by M-19 guerrillas, and the subsequent violent storming of the building by the military, which cost the lives of more than 100 people, including 11 Supreme Court justices and at least 10 victims of enforced disappearance. The tendency among Colombian historians and analysts has been to attribute the episode to autonomous military initiative, with some even labeling it a mini-coup d'état (interview with Leal, 2015). Even analysts who reject the coup label describe the siege as a fundamental moment in national history, with the armed forces simultaneously recapturing protagonism from Betancur and awakening average Colombians to the accumulated level of military autonomy (Vélez and Atehortua 1993, 279). Repercussions have echoed throughout Colombia ever since: in 2010 and 2011, respectively, Coronel Alfonso Plazas Vega and General Jesús Arias Cабrales were convicted for the disappearances, a major contributor to the rising temperature of civil-military relations during the Santos administration.

In another portent of later events, the military played a spoiler role with respect to the FARC as well. At first appearance, relations with the FARC were the major improvement of the Betancur administration. In 1985 the FARC formed the Patriotic Union (UP), a civilian wing often analogized to Northern Ireland's Sinn Féin. The effort was doomed, however. First, the FARC's dominant ideologues, fully acculturated to violent revolution, had no intention of giving up arms and viewed the UP as fulfilling a key role in its strategy of "combining all forms of struggle" (*la combinación de todas las formas de lucha*—see Dudley 2004, 8). The power of spoilers, meanwhile, accelerated rapidly, especially in the form of localized alliances between landowners and other regional elites, paramilitaries, and units of the armed forces (Kirk 2003). The result was a systematic massacre—sometimes labeled a genocide—of thousands of UP members during the

administration of Virgilio Barco (1986–1990), along with a stark demonstration of the autonomy the military had acquired (Gómez-Suárez 2011, 91-95).

The most notable success of Barco's term occurred when the M-19 agreed to lay down its arms in 1989. More comprehensive possibilities for peace, however, were undermined by the increasing power of the paramilitaries—and their ties to the military, an alliance that was becoming the dominant response to the security threat. Observers generally suggest that the military operated with significant autonomy; in particular, the complete lack of operational oversight meant that local military officials felt free to take initiative and help form and train paramilitary groups (Ronderos 2014, 34-36; interview with Leal 2015).

### **The 1990s: Democracy, Security Crisis, and Rearmament**

#### *The 1991 Constitution and Military Autonomy: A Reckoning Postponed*

The early 1990s continued the trend of divergence between, on one side, civilian prioritization of democratic reform and, on the other, deepening chaos and violence throughout the country. From a long-term perspective the most important development was the enactment of the 1991 Constitution after a process overseen by the César Gaviria administration (1990–1994). Internal conflict was the fundamental backdrop for the effort; indeed, the day of constituent assembly elections, the military carried out a raid on the FARC's headquarters in Meta department. However, civil-military relations issues were largely excluded from the Assembly. The dominant sense among the delegates was that the key goal of the assembly was opening space for the emergence of new political forces (Cabarcas Maciá 2011). Several constitutional articles did slightly alter the civil-military balance, including the formal incorporation of a 1987 Supreme Court decision barring civilians from being tried in the military justice system. In addition, the

more stringent requirements for imposing states of exception dulled the edges of a tool that had frequently empowered the military. The main bulwark of Colombia's expansive military justice system from the 1886 Constitution, however, was left untouched (see Chapter 4). Even in retrospect, participants defended the strategy: despite subsequent turmoil, former M-19 leader and assembly co-president Antonio Navarro Wolff stated in 2015 that it was "absolutely the correct strategy" (interview with Navarro Wolff, 2015). Finally, Gaviria also used the "constitutional moment" (Ackerman 1991) to make a change of fundamental importance: the civilianization of the Ministry of Defense. The placement of a civilian at the head of the defense ministry did not produce rapid changes in democratic oversight, but it did lay the essential groundwork for eventual rebalancing of civil-military power.

#### *President Ernesto Samper: A Weak President and a Dejected Military*

In states struggling with security threats, weak presidencies tend to enhance military autonomy. The presidency of Ernesto Samper (1994–1998) was doomed nearly from the start: investigations into credible allegations that his campaign had received significant support from drug traffickers began even before Samper took office in August 1994 (Ramírez, Stanton, and Walsh 2005, 104). By 1996, the U.S. had revoked Samper's visa—a major blow to the psyche of Colombian elites—and the U.S. decertified Colombia as a partner in the drug war from 1995–1997. Social order coalition members were frustrated by Samper's pro-peace and human rights message; by late 1995 rumors of a potential coup swirled, a pattern that would occur several more times during Samper's term (*Semana* 1995).

Lacking moral authority or the backing of the U.S., Samper's wan attempt at negotiations with the FARC had little hope at altering the deeply rooted skepticism toward peace talks within

the military. Moreover, the military was flailing: despite a gradual increase in resources that had started as early as the Barco administration (Dávila 1999, 296), guerrillas inflicted a series of mortifying defeats on the armed forces. In August 1996 the FARC stormed a base in Putumayo, killing 27 soldiers; in March 1998 an attack in Caquetá department killed 61 soldiers, with 43 more captured (Jiménez 2014). These losses angered and demoralized the military, as did a growing reputation in the eyes of U.S. interlocutors as incompetent abusers (Kirk 2003, Chap. 7). Pressure on human rights issues, from both domestic and international sources, also grew during this period, prompting complaints that fabricated abuses by guerrillas and NGOs were destroying the military's image and morale. Tate (2015, Chapter 3) suggests that in the short term, resistance to rights requirements encouraged the military to further outsource combat to the paramilitaries. Paramilitary expansion was dramatic under Samper. The government contributed to their proliferation by authorizing the creation of Vigilance and Private Security Cooperatives, known as CONVIVIRs. The coalition of social actors within Colombia that supported the CONVIVIRs included "ranchers, businesspeople, some municipal officials, and the security forces, in particular the army" (Human Rights Watch 1998)—in short, the core of the Colombian social order coalition. As described in dozens of reports by domestic and international rights groups, the IACHR, the Colombian office of the UN Office of the High Commission on Human Rights (UNHCHR, which the government allowed to open an office in Colombia in 1997), and (with more discretion) the U.S. State Department, coordination with paramilitaries was an undeniable phenomenon. More broadly, with nearly nonexistent domestic and international support and the military suffering from a rapidly deteriorating image, civil-military tensions were sharp. In July 1997, Samper fired armed forces chief Harold Bedoya, one of the most respected generals in the officer corps; coup rumors

briefly reignited, but for the most part the military and Colombia at large awaited the result of the 1998 elections.

*President Andrés Pastrana: Negotiation and Militarization*

Samper's inability to pursue peace ironically opened the door for his successor, Conservative Andrés Pastrana, to run on a platform that included peace talks. Pastrana was less disdainful than Betancur, however, of a strong role for the military. Indeed, his presidency was defined by the simultaneous pursuit of ambitious negotiations with the FARC and the initiation of a major military rearmament project, each of which carried major implications for civil-military relations.

Given the economic problems that pervaded Colombia in the late 1990s, Pastrana's plan to attain greater military capacity relied on U.S. assistance, making the improvement of relations with the U.S. another priority. In the incarnation originally formulated by Pastrana, Plan Colombia would focus on the roots of the conflict by promoting social investment as a means of building peace and providing an alternative to coca cultivation (Ramírez, Stanton and Walsh 2004, 106). However, his version did not survive contact with the political realities of Washington. Perhaps surprisingly, part of the impetus for boosting the military came from Democrats in the Clinton administration, who were eager to portray themselves as capable of embracing hardline policies when necessary—such as combatting what rapidly became labeled as Colombia's "narcoguerrilla" threat. Instead of a social focus, passage through the U.S. legislative process led to an array of bureaucrats and legislators adding progressively more line items, with funding shifting ever further toward modernizing Colombian military hardware and training Colombian troops (Tate 2015, Chapter 1).

Meanwhile, the peace process proved disastrous. The FARC used the Netherlands-sized demilitarized zone granted to it to reorganize and rearm. The most visible sign of disconnect between Pastrana and the military came in May 1999, when Minister of Defense Rodrigo Lloreda—a rare civilian defense minister respected by both the military and a broad swath of civilian elites alike—resigned over the lack of direction in the peace negotiations and sidelining of military voices (*Semana* 1999). Over a dozen other generals also offered to step aside in solidarity with Lloreda, though the offers were rejected. The military response was comprehensible, if not appropriate: accumulated evidence pointed to a range of FARC activities that amounted to using the demilitarized zone as a staging ground for reinvigorated military operations (Kirk 2003, Chapter 7). Although the peace process limped along until early 2002, by early in the new millennium it was increasingly clear that the military rearmament heralded intensified conflict rather than mere enhancement of the government’s position at the negotiating table.

#### *Colombia’s Democratic Oversight Status: 2000*

The status of democratic oversight in Colombia as of 2000 was characteristic of most of the previous 20 years: slowly progressing structures that were wholly insufficient relative to the chaos on the ground. With respect to civilian engagement, laws and established bureaucratic structures pertaining to civilian engagement were more advanced than actual oversight. The travails of successive ministers of defense were illustrative: given recurrent weaknesses in policies emanating from the presidency, few ministers possessed both military credibility and the ability to influence the presidency. Channels for civilian engagement did exist. Aside from the civilian minister, the three vice-minister positions were each occupied by civilians. However, in some policy domains in which civilian guidance was most necessary, the pact was fully maintained. One

such area was operations, where the military had nearly complete autonomy, even after revelations regarding collaboration with paramilitaries became more frequent.

In addition, civilian interest in and knowledge of national security issues lagged well behind the expanding scale of internal conflict (Leal Buitrago 2006). This was exacerbated by the lack of military experience among the vast majority of middle- and upper-class Colombians, as well as their disdainful social attitude toward even relatively high-ranking officers (Isacson 2009, 174). Academic critiques of Colombian security policy were abundant, but efforts to break down the civil-military wall were uncommon. Congress was a reactive body: although not all presidential initiatives were endorsed without reservation, few initiatives originated within the chambers.

The status of legal accountability was similar to that of civilian engagement: basic groundwork laid, but a significant lack of follow through. Despite the 1991 Constitution's demurral on most civil-military issues, reformers' hopes that the constitution would evolve toward greater oversight were buoyed by the Constitutional Court, which laid the cornerstone for limitation of the *fuero militar* (the military's exemption from civilian courts) in Sentence C-358 of 1997, when it ruled that the judicial baseline in all cases should be the civilian courts, setting a key baseline for future jurisprudence. Nonetheless, as of 2000 a wide breach had opened between de jure and de facto accountability. Following the landmark C-358 decision, in 1999 a new penal code attempted to clarify jurisdictional issues, but the IACHR noted continuing deficiencies, including a severely circumscribed set of crimes specifically removed from military jurisdiction, as well as ongoing confusion about procedures for resolving jurisdictional disputes (IACHR 1999—see Chapter 6 for more detail). Actual prosecutions were rare. Even though hundreds of soldiers came under investigation, especially for either omission or active cooperation with paramilitary groups, the maximum penalty in nearly all cases was dismissal from service rather



than prosecution. In a 1997 interview with Human Rights Watch, General Harold Bedoya was unable to name any examples of convictions for human rights abuses in the military justice system (Human Rights Watch 1998).

TABLE 3.2: DEMOCRATIC OVERSIGHT STATUS: COLOMBIA 2000

Dimension ↓	Year →	2000
Civilian Engagement		2
Legal Accountability		2
Military Noninterference		2

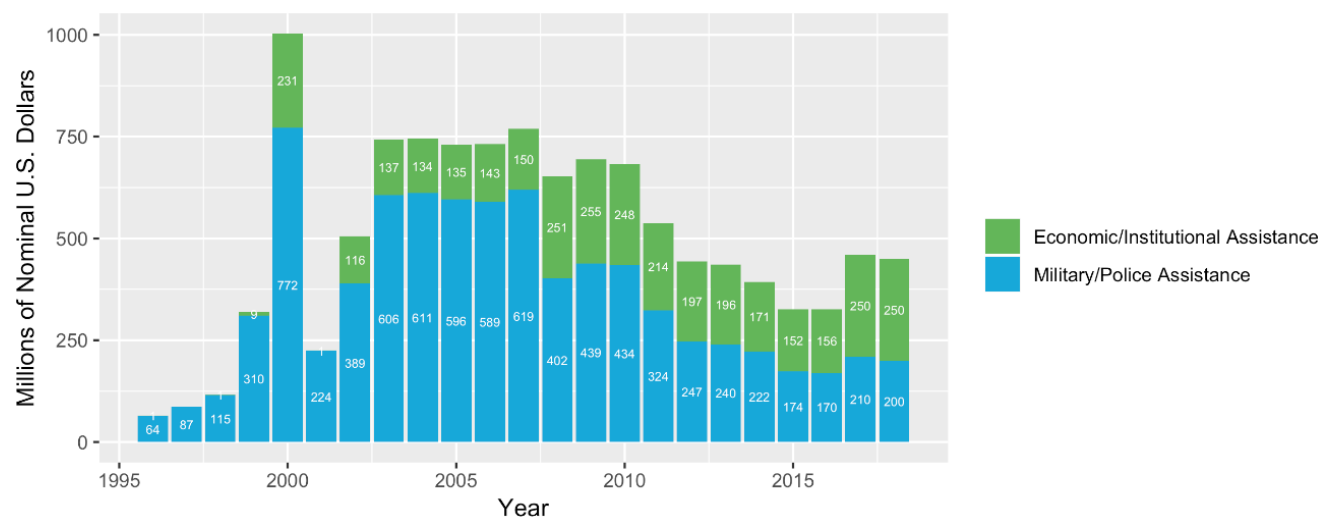
(All dimensions scored 1-5: 1=abysmal; 2=deficient; 3=moderate; 4=sufficient; 5=exemplary)

### **Militarization Ascendant: Plan Colombia and the Rise of Álvaro Uribe**

This militarized version of Plan Colombia was initiated in earnest in July 2000. Aside from the vast funds committed to the project (see Figure 3.2), it brought a significant doctrinal change for the military: the acceptance of an explicit counternarcotics mission. During much of the 1980s and 1990s, the military had sought to avoid prioritizing the mission out of fears that interactions between soldiers and traffickers would foment corruption (Borrero 2006, 120). Given the resources that accompanied Plan Colombia, however, the military shifted its stance, embracing the technology and training that accompanied a U.S.-financed antidrug brigade (Ibid., 134). Several changes associated with Plan Colombia were particularly crucial in shifting the conflict's balance. One crucial requirement was the establishment of "joint command mobile brigades," which marked the most significant strategic shift for the military since the Second World War (interview with Leal, 2015). By the end of Pastrana's term, the turn toward militarization was underway, but the institutional level was slower to respond. As part of the preparations for a new offensive phase,

Congress passed the Law of National Security and Defense Law in 2001. However, civil society groups were dismayed by multiple provisions that would have given soldiers greater control over crime scenes and detentions and facilitated rights and due process abuses (*Semana* 2001). The Constitutional Court concurred, declaring the law unconstitutional in 2002 (Constitutional Court 2002). Thus, as a presidential transition approached in 2002, the pace of operational modernization was increasing, but the signs that the government was capable or interested in producing a more structured, civilian-empowering institutional architecture was less clear.

FIGURE 3.2: U.S. ASSISTANCE UNDER PLAN COLOMBIA



Source: Isacson 2018

### *Uribe's First Term: Modernization and Personalized Civilian Control*

Civilian control is generally enhanced when strong executives take a direct interest in military affairs. However, when this control is personalized rather than institutionalized, the results for democratic oversight are more ambiguous. The two administrations of President Álvaro Uribe exemplify the promises and risks of personalized civilian control for broader democratic oversight.

By the time of elections in 2002, much of the Colombian establishment was inclined toward a military offensive that would decisively change the conflict's balance. Uribe was a natural figure to preside over a new phase of the conflict. The scion of a landholding family, Uribe was deeply involved in politics in Medellin and its surrounding department, Antioquia, which were the heart of the conflict's mutation from class and land ownership-based insurgency toward drug trafficking and paramilitary-guerrilla confrontation. Moreover, he blamed the FARC for the death of his father during a 1983 kidnapping attempt. With resources and personnel flowing into the armed forces and the strongest recent civil-military irritant—peace talks—off the table, conditions were ripe for more cooperative relations, though comprehensively increasing democratic oversight was a different question. On the eternally pesky question of human rights, Uribe sent signals of his allegiance even before his official candidacy was launched when he spoke at a fete honoring two generals who had been cashiered from the Army for collaborating with paramilitaries (Isacson 2009, 170-171). The president's ideological alignment with the generals was strong, and his rhetorical support was unwavering. One prominent military historian characterized the process as one of Uribe "seducing and enchanting" the military (interview with Leal, 2015). The National Security Doctrine, whose influence remained powerful in military doctrine, coalesced perfectly with Uribe's signature "Democratic Security Policy," which emphasized the recuperation of territorial control and combat against insurgents and drug traffickers in the interest of promoting economic development and a strengthened state.

Given the primacy of territorial control, the marriage between the military and Uribe seemed to be a blessed one. From the beginning, however, demands for results were an ever-present accompaniment to Uribe's symbolic nods and explicit exaltations of the troops. A *Semana* article in August 2002, titled "Uribe Demands Effectiveness from the Military," noted that "Uribe

said he expected effective results in the least amount of time possible, more so now that they have the economic support from Colombians paying the new tax [on the wealthy]...he specified that there must not be more cases...where the Army arrived late” [to the scene of notorious FARC attacks] (*Semana* 2002). It was soon apparent that Uribe favored a demand-and-command style unprecedented for a civilian president. As his presidency progressed, he became notorious for calling officers at all hours to demand updates on progress, and for keeping elaborate detailed track of progress down to the unit level.

Military officials were highly satisfied with Uribe’s general outlook on the conflict. Nonetheless, officers also bridled at the degree of new attention to issues viewed as properly internal. When the president dispatched the “wrong” emissary from the civilian world, the fragile institutional-cultural underpinnings of increased oversight became clear. The earliest and most striking example was Uribe’s first defense minister, conservative politician Marta Lucía Ramírez. Not only was Ramírez the first woman to serve in that capacity, she was ambitious in her desire to modernize bureaucratic practices and rein in some of the institution’s more unruly practices. She personified the invigorated civilian interest in technocratic management; from the military perspective, she also completely lacked an understanding of war (*Semana* 2003). Confrontations over military privileges and policy procedures led to repeated clashes with the chief of the armed forces, General Jorge Mora. When Ramírez started pushing for greater involvement of other agencies in the operations planning process, she was deemed to have crossed a line into a fully military domain, and Uribe forced her out after 15 months, in November 2003 (*Semana* 2003; Isacson 2009, 211-212).

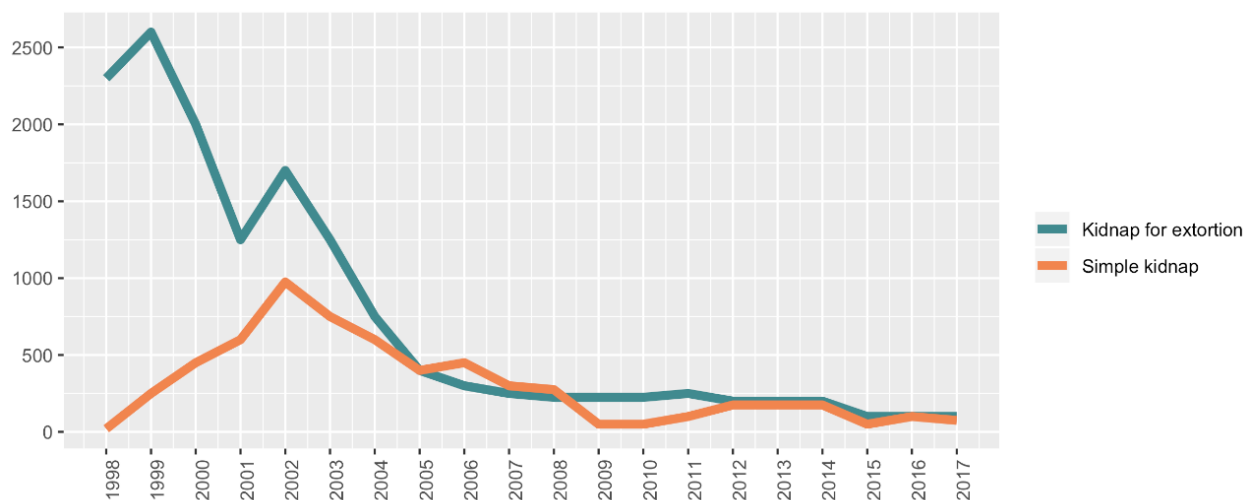
Such frictions were a recurring feature during the first term, demonstrating how the politics of militarization can disrupt previous civil-military patterns even when the presidential-military

alliance is solid. Uribe's replacement for Ramírez as defense minister, Jorge Alberto Uribe (no relation to the president), was more diplomatic but similarly served as a target for officers discontented by the pace and form of change. Perhaps the most evident moment of tension during the first term occurred in April 2005, when four of the highest-ranking Army generals on the joint staff were fired for overly stubborn opposition to the shift toward joint commands, which they perceived as an imprudent transfer of the Army commander's authority to the joint chiefs commander. The generals reacted by airing grievances in the media, suggesting that the changes "dismembered the Army" (Fundación Ideas para la Paz 2005) and that Minister of Defense Uribe "did not have moral authority" on defense issues (*Semana* 2005). Notably, however, they refrained from direct critique of the president, suggesting instead that the famously micro-managerial executive was merely "ill-informed" by his ministers (Ibid.). A final set of resentments related to the exploitation of ideological sympathies, especially the demands made by members of the *Uribista* coalition for services viewed by soldiers as outside the military's domain, such as providing security during politicians' visits to country estates (interview with retired intelligence officer, 2015).

Disgruntled officers and civil-military culture clashes might have produced a civil-military crisis under previous administrations. Two factors ensured that the discord was contained. First, Uribe's constant signals of support for the troops, which is typical of presidents who initiate militarization policies. More important was success: strategic and tactical innovations produced a pronounced shift on the battlefield during the first term. An offensive in 2003 pushed the FARC out of the province surrounding Bogotá, and starting in 2004 the military aggressively pushed into the FARC's heartland in south-central Colombia, driving the rebels into remote areas of high mountains or deep jungle (Borrero 2006; Vargas 2012, 201-204). The change in the strategic

balance boosted morale, though tensions were not completely absent in the field. One source of persistent though low-level resentment was the degree to which increases in military capacity vastly outpaced the establishment of basic civilian governance in territory retaken from insurgents (Borrero 2006, 136). Such a condition echoed the longstanding criticisms of the state’s eternal disinterest in establishing effective non-military presence in the regions. The difference was that with the guerrillas increasingly retreating to remote zones—which led, finally, to a decline in high-profile crimes such as kidnapping (see Figure 3.3)—the government’s political fortunes were soaring, and the deficient follow-up seemed less pressing.

FIGURE 3.3: KIDNAPPINGS IN COLOMBIA, 1998-2017



Source: RESDAL 2018, 20

The battlefield offensive was matched by a public relations one, in which demonization of the FARC was used to polarize public opinion. The rebels’ brutality—especially the kidnappings, which elicited enormous anger throughout Colombia—had made it easy, but the decision to abandon any pretense of openness to negotiations, along with the visceral fury of Uribe’s

messages, helped raise hatred of the FARC and make attitudes toward the offensive the central axis of domestic politics.

As I suggest in Chapter 2, human rights abuses are an inevitable consequence of militarization. From the beginning of Uribe's presidency, rights violations were indeed the shadow hanging over the administration, especially as evidence of military abuses mounted (see Chapter 4). Unsurprisingly, given the emphasis of militarizing presidents on protecting social order coalition cohesion, the dynamic between Uribe and members of the oversight coalition was a mirror image of the essential trust between the president and the military: domestic rights groups opposed nearly every element of the president's program, and Uribe was unstinting in his attacks. Rights groups assailed an early set of decrees granting security services increased detention arrest, search, and detention powers (Washington Office on Latin America 2002). When 80 domestic NGOs released a report in September 2003 titled "The Crossroads of Authoritarianism," Uribe labeled them "spokespersons of terrorism" and "human rights traffickers," who roam foreign countries asking for resources and acting as obstacles to the defeat of "terrorism" in Colombia (*El Tiempo* 2003). Numerous rights advocates were murdered; while this was not a new phenomenon, Uribe's stigmatization of the oversight coalition exacerbated oversight coalition anger.

#### *Colombia's Democratic Oversight Status: 2006*

By the end of Uribe's first term in 2006, it was clear that the changes wrought to both the military as an institution and civil-military relations were far-reaching. The first term produced multiple contradictory effects. In terms of troop numbers, resources, and technology, military power had grown enormously—even as the military's autonomy over institutional management had ebbed significantly compared to previous administrations. The military regained prestige, but

was obliged to tolerate the strings attached to resources—and even Uribe’s micro-management that some viewed as breaking the chain of command (Borrero 2006, 121). A new wave of technocratic civilians and modernizing officers arrived in the defense ranks, but the military’s traditional right-radical ideology was buttressed by Uribe’s national security vision, which included an important level of continuity with the generals’ Cold War-era doctrine. In addition, the U.S.-Colombia security alliance reached its zenith, although backing became increasingly polarized as Uribe failed to establish effective lines of communication with Democrats (interview with Tickner, 2015). In short, the sheer volume of new resources, technologies, and personnel, along with alterations to doctrine, produced sharp “growing pains” within the armed forces (Borrero 2006).

Civilian engagement rose measurably from 2000, moving from a score of 2 (deficient) to a 3 (moderate). White papers were written, numerous institutional lines of coordination with the U.S. were implemented, and the management of defense policy modernized. Strife within the defense ministry stemmed from civilians asserting presence in traditionally military domains, not military encroachment in civilian areas. The degree to which this oversight could be characterized as an “improvement” was tempered, however, by the personalized form in which it manifested. When disputes arose, the impulse was to solicit presidential decisions rather than develop alternative resolution channels. Congress’s role continued to be highly restrained, although the breakdown of the Liberal-Conservative duopoly had allowed newer voices to enter parliament. Some of these were viscerally pro-Uribe, while those on the left were often tarred as supporters of the guerrillas; even when baseless, the radical (or even insurgent) pasts of some prominent legislators reinforced military suspicions. Moreover, mere representation of areas controlled by the FARC produced military suspicion of legislators and hindered cooperation (interview with



Bernal, 2015). Given the combination of polarization and the dominance of the Uribista coalition, Congress's subordinate status on defense matters was unsurprising.

Military noninterference in civilian politics also improved, also moving from a score of 2 (deficient) to a 3 (moderate). Given the highly public nature of the above-mentioned civil-military confrontations, the degree of military acquiescence should not be overstated. Yet unlike several prior administrations, relations never reached a breaking point, and prominent dismissals came at the behest of civilians rather than in the form of protest resignations. Overall, despite the tempests and initial shock to the civil-military equilibrium, relations regained balance: Uribe's demands for results, occasional castigations and firings, and intensified bureaucratic oversight administration were tolerated in exchange for a flood of resources, unstinting rhetorical support, and protection from the oversight coalition's persistent pressure for greater accountability. The president enjoyed a far more responsive military than his predecessors, and an increasingly effective one. There was little to indicate that the arrangement was unsustainable.

There was no change in the realm of legal accountability. Despite the jurisprudential shifts imposed by the post-1991 Constitutional Court, the military continued to guard against limitations on military jurisdiction, even as direct abuses (rather than acts of omission related to paramilitary actions) increased (see Chapter 4). Voluntary transfers from the military justice system to the civilian one in cases of violence against civilians were extremely rare. Disciplinary measures by the inspector general's office were more frequent, but according to the State Department's annual human rights reports, these measures were almost never matched by criminal prosecutions, and only after years of delay (U.S. State Department 2003; 2004; 2005). In fact, despite the formal autonomy of the Attorney General's Office (*fiscalía*) the attorney general during most of Uribe's first term, Luís Camilo Osorio, was a perfect match for the ideological mood: extremely

sympathetic to state forces and actively hostile to investigations of military collaboration with paramilitaries (Human Rights Watch 2002).

TABLE 3.3: DEMOCRATIC OVERSIGHT STATUS: COLOMBIA 2006

<b>Dimension↓</b>	<b>Year →</b>	<b>2000</b>	<b>2006</b>
<b>Civilian Engagement</b>		2	3
<b>Legal Accountability</b>		2	2
<b>Military Noninterference</b>		2	3

(All dimensions scored 1-5: 1=abysmal; 2=deficient; 3=moderate; 4=sufficient; 5=exemplary)

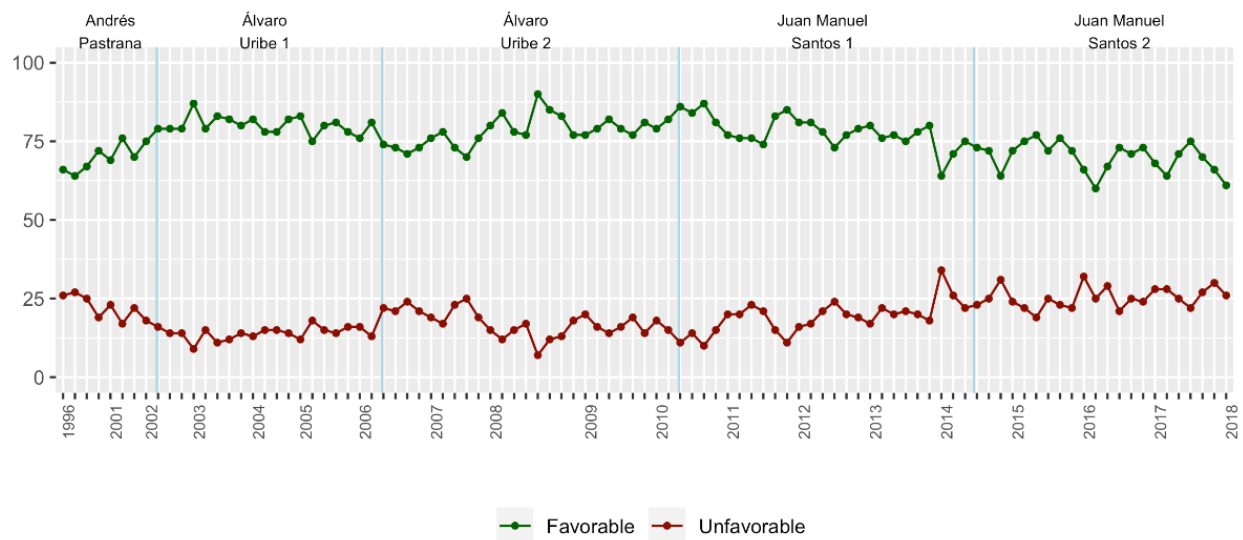
*Uribe's Second Term: Battlefield Success, Political Polarization, and the Military under Scrutiny*

Colombia's civil-military equilibrium showed cracks during Uribe's second term (2006–2010). The cause was a direct result of militarization: civilian demands for results, and the incentives that were established to encourage military initiative, created a human rights nightmare. When the scale and egregiousness of soldiers' crimes was revealed, the administration was obliged to take steps that curtailed protection from judicial accountability. Anger and uncertainty became an increasingly powerful undercurrent of civil-military dynamics, and these forces would emerge into the open as the Uribe era wound down.

At the outset of Uribe's second term, however, no such shift was in sight. Indeed, during the first half of the term, a shift toward bombing FARC camps in hopes of killing top leaders began to pay dividends. The peak came in July 2008, when an audacious military mission known as Operation Check (*Operación Jaque*) resulted in the rescue of the 15 of the FARC's most high-

profile hostages, including three American military contractors and former presidential candidate Ingrid Betancourt. Not only were these missions disruptive and demoralizing for the FARC, they brought both Uribe's and the military's popularity to new heights at home, along with high acclaim abroad (see Figure 3.4; for Uribe see Figure 4.1).

FIGURE 3.4: MILITARY APPROVAL, 2000-2018



Source: Gallup 2018

Uribe named Juan Manuel Santos as minister of defense for his second term. Santos was a heavyweight, having served as minister of finance under Pastrana and leader of the Liberal party before shifting allegiance and leading the establishment of the Uribe-led Social Party of National Unity (commonly known as the Party of the U) in preparation for the 2006 election. Under Santos's leadership, civilian control in the administrative and strategic realms increased further. Vice-Minister for Human Rights and International Affairs Sergio Jaramillo, whose intellectual acumen was widely respected, including among U.S. officials, was also able to operate with authority among the generals. While Santos was a product of Colombia's aristocracy, he had at least completed the military service that most Colombian elites avoided. Santos also gained credit

within the military for taking the heat when international rights groups condemned the deceptive use of the Red Cross logo during Operation Check (interview with Farah, 2016). This episode reflected the highly ambitious Santos's sharp political instincts—one reason he was frequently described as a potential presidential successor.

### *The “False Positives” Scandal and the Assertion of Democratic Limits*

The scandal that proved the undoing of the tenuous civil-military equilibrium emerged starting in 2007, and erupted in late 2008. Since 2003, the Colombia office of the UNHCHR, based on contacts with local groups, had been reporting a rash of extrajudicial executions. Although the military at first denied the reports, coverage exploded in September 2008 (Salazar 2012; Gallagher 2015—see Chapter 4 for more detail on the events in the following section). At least 3,000 victims, most of them from marginalized social sectors, were eventually identified; many had been captured, murdered, and dressed as guerrillas—a tactic known as “false positives”—in order to boost body counts. In October 2008 Defense Ministry Directive 029/2005 was published in the press, revealing a defined system of rewards and benefits for soldiers on the basis of performance. The potential monetary rewards for killed guerrillas were significant, and the evidence required to demonstrate the guerrilla connections of the deceased was less than rigorous (*La Silla Vacía* 2009). The furor was enormous, although as analysts noted, the use of rewards was nothing new, and a body count mentality had encouraged false positives for years (Human Rights Watch 1998; Velásquez 2008).

Military officials, of course, were accustomed to allegations of human rights abuses, and possessed an arsenal of responses, ranging from acknowledgment of “isolated incidents” perpetrated by “rotten apples” to counteraccusations about “legal warfare” (*guerra jurídica*)

carried out by guerrilla allies and sympathizers. The sheer volume of killings, however, overwhelmed military efforts to contain the scandal. Minister of Defense Santos played a central role in the administration's response. When false positives revelations were trickling out in 2006, Santos staunchly defended the military in public appearances. He also, however, sensed that the scale of the scandal constituted a threat to the image he needed to cultivate as a potential presidential contender. He issued a set of internal directives to halt the perverse incentives and appointed a commission to examine the phenomenon. The major initial shock to civil-military relations sparked by the revelations, however, was the firing of 27 officers in October 2008 and the departure of the Army chief a week later (León 2010). In sum, the false positives scandal revealed the importance of civilian presence—and the acute political antennae generated by political ambitions—within the Ministry of Defense. Santos, Jaramillo, and their allies were spurred to take quick action to address the roots of the problem, even if media revelations dictated the tone of the civilians' response.

These revelations regarding the cost of militarization were complemented by additional controversies that reinforced the polarization characteristic of the Uribe era. Starting in 2006 information linking scores of Colombian congressional allies to paramilitary leaders began leaking out, prompting a series of investigations by the Supreme Court (which has judicial responsibility over legislators). As the investigation unfolded, Uribe repeatedly attacked the Court; moreover, revelations emerged that the intelligence agency was engaged in extensive surveillance of both the Supreme Court and numerous other government opponents—notably including dozens of rights activists within the oversight coalition (Romero 2009).

In line with typical patterns of militarization and oversight coalition contestation, the oversight coalition acted to channel these scandals into international pressure. The international

front had become more favorable: Democrats' victory in the U.S. 2006 midterm elections empowered lawmakers who were far more skeptical of unfettered assistance to Colombia and of Uribe personally, as well as far more tightly connected to the oversight coalition. Although the level of conditionality on most Plan Colombia funds had resulted more in required government-civil society dialogues than actual hard penalties (see Chapter 4), Democrats wielded a critical source of material leverage in the form of Colombia's long-sought free trade agreement, negotiated with the Bush administration and signed in November 2006. Uribe explicitly linked efforts by rights groups to free trade complications, decrying NGOs that act "like cowards when they go abroad to try and mistreat the good name of Colombia...every day their excuse is human rights. They ignore progress and go abroad every day simply to oppose the [free trade agreement] with miserable lies" (Uribe 2008).

As the 2010 election approached, the Uribista coalition focused on procuring a third reelection, and the furor over Uribe's messianism reached a peak. Not until February 2010—just three months before the election's first round—did the Constitutional Court squash the possibility of reelection, ruling that the key bill suffered from both procedural and substantive constitutional flaws (*El Tiempo* 2010). Although Santos faced a more spirited challenge than expected from former Bogotá mayor Antanas Mockus, in the June runoff he was elected with nearly 70 percent of the vote.

By the end of Uribe's term, the Colombian conflict had been transformed, as had Colombian civil-military relations. Under the Democratic Security Policy, battlefield and political success were nearly inseparable. Uribe's dedication to altering the balance of the conflict unquestionably gave direction to security policy. The civil-military balance was ambiguous: civilian presence in the Ministry of Defense was more entrenched than ever before, but the tenor

of oversight was also deeply personalized. The social order coalition was expansive and coherent and military power was at a zenith—but the inevitable human rights toll had invited intense oversight coalition scrutiny of the institution. The frequent assessment of the military as having gained “the most political influence in its history” (Schultze-Kraft 2012, 421) is justifiable in terms of warmaking capacity, public approval, and professional prestige, including at the international level. Yet while power can be channeled to produce autonomy, they are not synonymous. The expansion of the military’s mission created the incentives that undermined autonomy. In particular, amplified pressure for results produced the atmosphere in which extrajudicial executions soared—acts which, once revealed, would disrupt military insulation from judicial autonomy, one of its most closely guarded prerogatives.

### **The Santos Administration: Civilian Recalibration and Military Resistance**

#### *New Civilian Priorities, New Military Suspicions*

The framework presented in Chapter 2 suggests that there is a difference between the *militarizer*—the president who initiates large-scale mission expansion—and his successor, the *policy inheritor*. Policy inheritors are less tightly aligned with the social order coalition, giving them the opportunity to recalibrate policy options and seek alternatives to militarization. The two Juan Manuel Santos administrations exemplify this dynamic. Eager to forge a historic legacy, Santos pursued the opposite of militarization: a peace process with the FARC. The split this induced in the social order coalition produced significant civil-military tumult—but in concert with international pressure, also finally led to greater judicial accountability.

Santos entered office with experience at balancing the competing imperatives of effective institutional management, responsiveness to foreign pressure, and loyalty to the generals. His

administration initially maintained much of the basic institutional and doctrinal architecture of Democratic Security. During the first 16 months of his term, the targeting of the FARC's high command produced the deaths of the group's top military leader, followed by the head of the FARC secretariat (Washington Office on Latin America 2011b). However, Santos's ambition to be a statesman clashed with military ideology and doctrine. First, he attempted to ease tensions with Venezuelan leader Hugo Chávez (Castillo 2011), eliciting outrage from both Uribe and hardliners within the military. The initiative was framed as a way of gaining Venezuelan cooperation on actions against both drug traffickers and the FARC; less apparent was the fact that Venezuelan support would be highly useful for Santos's more far-reaching objective: the initiation of peace talks with the FARC in Havana. In the meantime, however, the haste of his reversal of Uribe's bellicose policies toward Chávez aroused suspicion. Moreover, Santos's early defense teams proved suboptimal as managers of civil-military friction. His first Minister of Defense, Rodrigo Rivera, was perceived as inexperienced in military affairs, while Santos's choice of an admiral rather than a general as armed forces commander generated resentment.

The social order coalition's cohesion took another blow in the fall of 2010, when Santos began pushing for a Victims' and Land Rights Law, an issue that split the centrist Bogotá elites from the more conservative regional elites associated with *Uribismo* (Washington Office on Latin America 2011a). Meanwhile, investigations and prosecutions in false positives cases began to rise, although few cases affected high-ranking officers. Unease about judicial status prompted renewed complaints that the military was bureaucratically suffocated (*empapelado*), i.e., that civilians demanded results but did not respect the military sufficiently to allow untethered operations.

Given that security threats and the military's spoiler potential each remained high, the Santos administration initiated several projects to alleviate military discontent. In April 2011 it

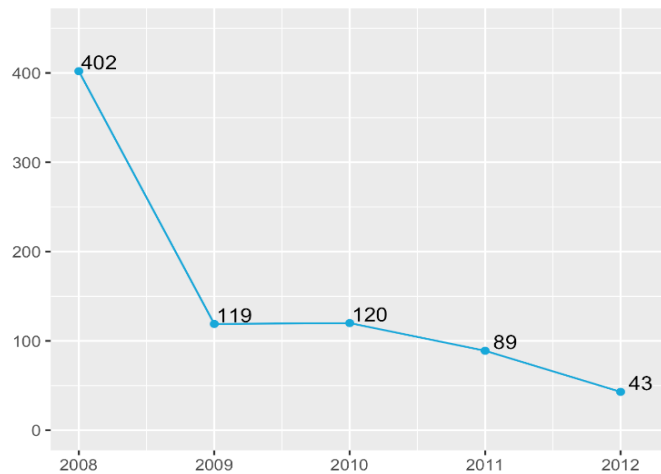


sent Congress a law to increase the state's role in providing legal defense for all soldiers accused of crimes, including those in civilian courts. A second project, the Legal Framework for Peace, specified the inclusion of the military in any eventual justice mechanism associated with a peace process. Finally, the administration proposed a constitutional reform that would have gutted Constitutional Court jurisprudence by making the military justice system the default venue for all crimes committed by active-duty soldiers (León 2011b). As it turned out, however, the heart of these efforts—the military justice expansion—mostly failed due to oversight coalition mobilization, showing the difficulty of credible commitments that international attention generates (see below and Chapter 4). In the context of 2011, however, the message sent by these initiatives was that Uribe's emphasis on *political* rather than *legislative* support for the military was no longer sufficient; the Santos administration's weaker ideological bond to the generals necessitated more nakedly transactional relations.

In the absence of a credible coup threat, militaries must seek alternative forms of expressing discontent (Brooks 2008). In 2011, rumors swirled that the Army had informally instituted “Operation Turtle,” slowing the operational pace to protest perceived judicial risk (Washington Office on Latin America 2011c). A report by analysts associated with the hawkish right suggested a marked slowdown in military-initiated combat operations since the false positives scandal and subsequent rise in judicial investigations (Rangel 2012—see Figure 3.5). Sources differ as to whether the alleged slowdown was real, but the perception helped accelerate changes in the high command, especially the September 2011 replacement of Admiral Cely with a highly respected Army general, Alejandro Navas, as commander of the armed forces. By mid-2012 the Uribe-Santos divide had become explicit; as part of his frequent attacks, Uribe depicted a military beset by judicial insecurity and anger at potentially being placed on equal footing with the “terrorists”

in an eventual peace process (Uribe 2012). In sum, despite Santos's legislative gestures, the social order coalition divide appeared increasingly wide.

FIGURE 3.5: COMBAT ACTIONS INITIATED BY SECURITY FORCES (FIRST TRIMESTER OF EACH YEAR)



*Source: Rangel 2012, 27*

#### *Colombia's Democratic Oversight Status: 2012*

Despite the civil-military storm clouds, regression in democratic oversight was limited. With respect to civilian engagement, Santos inherited from Uribe an institutional framework with greater oversight capacity than any pre-militarization administration. Civilian presence within the defense ministry was substantial by 2012, and oversight of budget execution was strong relative to many regional peers. Deficiencies remained, however. Civilians in nominal positions of authority complained that officers withheld information regarding military operations to an extent that amounted to insubordination (interview with former vice-minister of defense, 2015). Uniformed members, for their part, griped about overly centralized decision making carried out by inexperienced (and sometimes corrupt) civilians (interview with retired intelligence officer, 2015). Analysts continued to perceive significant corruption and waste, including visible appurtenances

such as official cars, chauffeurs, and bodyguards dispensed not only to generals and admirals placed in administrative positions, but their wives and children as well (interview with Leal, 2015). Congressional oversight remained essentially reactive: although the increasing pluralism in Congress resulted in a greater range of voices taking positions on conflict issues, debates pertaining to civil-military relations were generally a byproduct of presidential initiatives.

For the first time in recent Colombian history, legal accountability improved as a result not of mere parchment changes but due to indications of will and capacity to prosecute rights-abusing soldiers. The vast majority of convictions, which numbered in the hundreds by 2012, were for false positives cases, few of which involved senior officers. However, the convictions of Colonel Alfonso Plazas Vega and General Jesús Arias Cabrales for enforced disappearances during the 1985 Palace of Justice siege demonstrated that the insignia of high-ranking officers were no longer an absolute guarantee of legal protection.

However, the improvement in legal accountability from deficient to moderate was partially offset by more frequent military signs of military interference in politics, prompting a score decline from 3 (moderate level of noninterference) to 2 (deficient). As described above, Uribe and his associates presented themselves as the military's natural allies, and actively sought to widen the divides between the generals and the Santos administration. While the outreach to Venezuela apparently served as the initial wedge between Santos and the generals, the failure of the government to slow prosecutions contributed to increased interference as well—with the rumblings about “Operation Turtle” the most notable signal of dissent potentially reaching into the active ranks.

TABLE 3.4: DEMOCRATIC OVERSIGHT STATUS: COLOMBIA 2012

Dimension↓	Year→	2000	2006	2012
<b>Civilian Engagement</b>		2	3	3
<b>Legal Accountability</b>		2	2	3
<b>Military Noninterference</b>		2	3	2

(All dimensions scored 1-5: 1=abysmal; 2=deficient; 3=moderate; 4=sufficient; 5=exemplary)

### *Peace Talks and the Difficulty of Reassuring the Military*

Civilian leaders pursuing policy alternatives to militarization must be alert to potential resistance from military leaders fearing loss of power and prerogatives. The Santos administration was well aware of the military's past objections to peace efforts and made active efforts to assuage military fears. Aside from the legislative projects, a key shift from previous negotiations was the inclusion of high-credibility representatives of the uniformed services with the defense ministry: General Óscar Naranjo for the National Police, and General Jorge Mora for the military. In addition, ex-vice minister of defense Sergio Jaramillo was appointed Peace Commissioner, and the defense minister appointed by Santos in August 2011, Juan Carlos Pinzón, also was considered a credible interlocutor by the high command. Indeed, Pinzón was perhaps too eager to prove his credibility, acting (as had many of Colombia's post-1991 civilian defense ministers) almost as a military ambassador to the presidency. However, the administration was constrained in appeasing the military by both the oversight coalition and, of course, the FARC, whose confidence in the government was low, given the shadow of the Patriotic Union, the failure of the late 1990s talks, and the brutality of the war during the 2000s.

### *The 2014 Election: Collusion and the Articulation of Military Grievances*

The run-up to the 2014 election provided an opportunity for the divided social order coalition. By 2013, the inclination of a substantial (though undefined) portion of the military to ally with Uribe was increasingly clear. Some members of the armed forces had been skeptical of Santos since his internationalist mien became evident, and following détente with Venezuela began filtering intelligence to Uribista figures (interview with Leal, 2015). The meddling became visible in April 2013, when intelligence regarding the pick-up point for FARC leaders being shuttled to talks in Havana was filtered to Uribe, who tweeted the coordinates. Although the high command defended the institution, reports of demoralization reemerged. Retired officers, especially those gathered in the Colombian Association of Retired Military Officers (ACORE) played a central role in accusing the administration of selling out to the FARC.

Military collusion continued following Uribe's July 2012 formation of the Front against Terrorism and the Pure Democratic Center political party (the "Pure" was later dropped), defined in opposition to the government's security policies (*El País* 2012). In keeping with the reputation of military intelligence as a redoubt of hawks, in early 2014 *Semana* revealed that soldiers operating out of a Bogotá internet café had been collecting data on the government's negotiating team, along with other political figures (*Semana* 2014). Some of the intelligence collected by the military was also sold to an operative working for Santos's opponent in the 2014 election, Óscar Iván Zuluaga (*Semana* undated), eventually resulting in the firing or reassignment of over 20 military officials.

Uribistas, including many allies within the military, strongly pushed a line throughout the election campaign (and beyond) painting peace proponents as dupes who risked handing over at the negotiating table what had been won on the battlefield. The moniker for the alleged conspiracy

being perpetrated by the FARC upon hapless or complicit government negotiators was *castrochavismo* (combining the names of Fidel Castro and Hugo Chávez). Its success hinged on the FARC acquiring progressively greater political power in Colombia's far-flung regions and using it to eventually impose a Venezuelan-style political model (interview with retired general, 2015). Another frequently expressed fear was that Santos was "negotiating away the armed forces" by supposedly pledging cuts to the defense budget and, more importantly, acceding to uneven treatment for guerrillas and military members in the transitional justice system. For the military, the relevant precedents were, on the one hand, an amnesty granted to the M-19 and the FARC in the 1980s; on the other, the increasing number of soldiers imprisoned for rights abuses (see Chapter 4). In addition, the military feared that civilian enablers of the conflict, including the business and political elites who funded and benefited from paramilitary actions, would not be subjected to any real accountability mechanism. To soldiers and officers, the military had been used over decades to put out fires lit by civilian elites: in the words of one retired intelligence officer, "they use us up and throw us out" ("nos usan y nos desechan," interview 2015). For the military, the goal was "peace with dignity," characterized by a recognition that the troops, too, counted among the conflict's victims, and a prevention of "revictimization"—meaning legal injustice on top of the physical toll (interview with retired intelligence officer, 2015). In the view of officers, a symbol of civilian determination to ignore the military's perspective was the lack of military representation in the Historical Memory Center, a quasi-official entity tasked with forging a record of the conflict (Ibid.). At the broadest level, the social order coalition was united by difficulty accepting the idea that the FARC was *negotiating* rather than *surrendering* as a defeated party (interview with Velásquez, 2015).

*The Electoral Aftermath: Military Resistance and Fragile Peace*

Santos narrowly held off Zuluaga in the election, providing a renewed mandate for peace talks, but the coalescence of the social order coalition to Uribe and the evident military disunity weakened Santos's position—which actually increased the influence of the social order coalition and international actors. By the end of 2014 grumbling was such that Santos felt obliged to warn military officials that “People who aren’t acting with loyalty are coming out, and any officer, no matter how important, showing the slightest sign of disloyalty or lack of discipline will be out of the military” (Isacson 2015.) For the oversight coalition, meanwhile, the military's complaints were disingenuous. In their view, military resistance reflected the overlapping fears of judicial accountability and—if punishment was avoided—of revelations that would (appropriately) stain the reputations of both individual soldiers and the institution. As a retired Army colonel wryly observed, “there are a lot of children in Colombia who are under the impression their grandfathers are heroes” (interview with retired colonel, 2015).

Uncertainty about both the peace process and the disposition of the generals mounted during the first half of 2015. Several violations of the ceasefire fueled allegations from both Uribistas and retired military members centered in ACORE. Perhaps the most visceral signal of the crisis in civil-military relations occurred when Santos appeared at the Army's annual 10K run in April 2015 and was subjected to loud, sustained booing, a nearly unprecedented act of defiance by rank and file troops. Santos's public calls for battlefield de-escalation, while necessary to prevent a poisoning of the atmosphere in Havana, reinforced the Uribista narrative of “appeasement,” which was uttered freely (if anonymously) even by officials within their offices in the Superior War College (interview with war college instructor/retired colonel, 2015).

In addition, by 2015 the combination of international pressure and the divided social order coalition had led to hundreds of false positives prosecutions (see Chapter 4). From the military perspective, these prosecutions were concrete, while vows to respect the military in the peace accords were mere words. Amid the stark uncertainty, the administration made additional attempts to make a credible commitment, reintroducing a bill to military justice expansion. Yet the version that passed was watered down, reinforcing the dilemma. The prevailing view was that the military was simply unsure of both what Santos wanted and who was influencing him (interview with Nino and Benito, 2015).

#### *Peace Accords, Social Order Coalition Resistance, and Civil-Military Disequilibrium*

As argued in Chapter 2, the influence of the oversight coalition can impede attempted commitment (or acquiescence) to a high-autonomy civil-military equilibrium. Therefore, while the administration's stubborn dedication to peace talks finally paid off with agreement on final terms in August 2016, the social order coalition remained dissatisfied. Some of the military's previously expressed fears proved unfounded: the government did not "negotiate away" the military's post-conflict budget or a continued internal security role.<sup>5</sup> However, international pressure helped ensure that a relatively robust transitional justice system, including both a truth commission and a judicial mechanism, was included in the accords (see Chapter 4). Military representatives had long claimed that the troops feared neither the truth nor the prosecutorial function of a transitional justice process, and indeed saw it as vastly preferable to the supposed lies, false witnesses, and glacial pace of the ordinary criminal justice system (Salceda Lora 2015). However, once the

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<sup>5</sup> A smaller guerrilla group, the National Liberation Army, continued its activities, as did "paramilitary successor" groups linked to drug traffickers and rural barons; each possessed sufficient firepower to justify the ongoing internal application of military coercive power.



prospect of a reckoning with state abuses became concrete, the social order coalition resisted. For the social order coalition—which never accepted the FARC as a non-surrendering interlocutor—the justice provisions for the guerrillas were too lenient, and the terms for the military were too harsh. On the basis of these objections, the social order coalition—led as usual by Uribe—mounted a spirited campaign to persuade Colombians to vote “No” in an October 2016 plebiscite intended to legitimize the accord.

In a dramatic and surprising turn, the “No” campaign narrowly won, necessitating emergency renegotiations that culminated in a renewed agreement with favorable terms for the military. During 2017 FARC demobilization got underway amid governmental disorganization and ongoing social order coalition efforts to denature the accords as much as possible (Isacson 2017). While overall civil-military relations calmed somewhat, uncertainty was not resolved. Uribistas eyeing the 2018 presidential campaign continued to stoke military discontent, while the oversight coalition fought to avoid further dilution of the transitional justice provisions. The commitment problem therefore remained present throughout the second half of 2017. Moreover, government commitments to the FARC were increasingly lacking in credibility, as required legislation stagnated and implementation of key elements of the peace accord floundered. Amid this uncertainty, the other central actors in Colombian civil-military relations—courts and prosecutors—increasingly trod a path of least political resistance, suspending prosecutorial processes or transferring them to the still-gestating transitional justice system.

### *Colombia’s Democratic Oversight Status: 2017*

While the peace process and accountability questions attracted far more attention, civilian engagement improved from a score of 3 (moderate) to a 4 (sufficient) by 2016. Operations

management within the defense ministry reflected more appropriate military deference to civilian strategy than in previous eras. In May 2016 incoming armed forces commander Alberto Mejía stated that despite the lack of a formal bilateral ceasefire, the Army had refrained, at civilian behest, from attacking FARC camps except as part of antinarcotics operations (León 2016). Defense ministry capacity improved as well: in interviews, several U.S. defense officials separately described both the vice-ministers and civilians at the next level down as intelligent, effective, and experienced, although the civilian talent pool was also perceived as shallow (interview with U.S. defense official 1, 2016; U.S. defense official 2, 2016).

Along one important but previously neglected dimension of democratic oversight—promotions—Congress finally became a protagonist due to the arrival of legislators with experience working in NGOs or investigating state abuses. The presence of these parliamentarians, such as Senator Claudia López (a former political analyst who had investigated paramilitary links to members of Congress) and Representative Alirio Uribe (a prominent litigator on behalf of conflict victims), added another hinge for rights advocates to seek influence within the state (interview with Roza, 2015). In 2014, Senators associated with the human rights movement insisted on debate about the rights record of several officers up for promotion (Senate of Colombia 2014). NGOs vocally criticized the process in 2016 and 2017, with Human Rights Watch singling out five officers with suspect records, one of whom was denied promotion (Human Rights Watch 2017; Durán Núñez, 2017). Some analysts downplayed the effectiveness of the change, noting that although abuse allegations were undoubtedly a fundamental criterion, making them the axis of promotions sometimes reduced the process to a proxy battle between Uribistas and anti-Uribistas (interview with Llorente, 2015).

Civilian attention to defense issues, and the integration of the military perspective into security studies, continued to strengthen. By 2015, a war college instructor estimated that up to 90 percent of students in the college's master's program were civilians, including many in high positions (interview with war college instructor/retired colonel, 2015). As the pace of conflict declined and Colombians began wondering about a peace dividend, civilians also made strides in monitoring defense spending. A detailed assessment of defense sector corruption risk by Transparency International placed Colombia in the "low" risk category (Transparency International 2017, 1). The most lagging area was procurement processes—fully 75 percent of purchases came through direct, non-public contracts, and congressional oversight was deficient (Ibid., 3). Despite a 2014 Council of State ruling that banned the direct disbursement of reserved funds, they remained both poorly regulated and weakly monitored by Congress, as evidenced by a new wave of scandals involving large sums of reserved funds allegedly misallocated between 2013 and 2017 (*Semana* 2017, *Semana* 2018).<sup>6</sup>

As Chapter 4 will describe, legal accountability rose and fell during the 2012–2017 period. The pace of prosecutorial efforts peaked between 2014 and mid-2016. In March 2016 an active-duty general, Henry Torres Escalante, was arrested for the first time and charged with homicide (Durán and Laverde 2016). Following the signing of the peace accord that July, efforts to delay prosecution and shift jurisdiction to the transitional justice system gained steam, producing considerable uncertainty and a decline in convictions in 2017. This decline, combined with transitional justice protections for commanders that oversight coalition observers deemed unduly permissive, prompts the evaluation of judicial accountability as returning to a deficient level.

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<sup>6</sup> Notably, corruption and rights scandals were interconnected (see Chapter 4).

Military political interference peaked in 2015 and 2016 before returning to a moderate level (a score of 3) following the promulgation of the peace accord in December 2016. One element of the procurement corruption scandals reported by *Semana* was the continued filtering of intelligence from officers to the political opposition. *Semana* reported, for example, that Uribe ally and former inspector general Alejandro Ordoñez had received military intelligence regarding a supposed joint campaign by the Santos administration and the FARC to seek his ouster (*Semana* 2017). Nonetheless, the decline in interference reflected a lull rather than an equilibrium: the presence of former M-19 guerrilla Gustavo Petro in the second round of Colombia's presidential election threatened to revive military politicization.

TABLE 3.5: DEMOCRATIC OVERSIGHT STATUS: COLOMBIA 2017

<b>Dimension</b>	<b>Year</b>	<b>2000</b>	<b>2006</b>	<b>2012</b>	<b>2017</b>
<b>Civilian Engagement</b>		2	3	3	4
<b>Legal Accountability</b>		2	2	3	2
<b>Military Noninterference</b>		2	3	2	2

(All dimensions scored 1-5: 1=abysmal; 2=deficient; 3=moderate; 4=sufficient; 5=exemplary)

## Conclusion

This framework elaborated in Chapter 2 suggests that militarization unleashes a set of dynamics that tend to disrupt previous civil-military relations patterns. In Colombia these preexisting patterns were unusually complex. Relative to regional peers, Colombia's success in avoiding direct military interventions in politics was conspicuous. Despite numerous episodes of strain, tense civil-military episodes generally produced resignations of military officers rather than

dramatic shifts in civilian policies. Overall, the military's power and autonomy were rooted in delegation by civilians rather than the seizure and maintenance of prerogatives. The extent and effectiveness of military contestation should not be understated, however: subordination does not mean that civilians can necessarily alter the terms of the arrangement at will. Attempts at doing so had been contentious even when undertaken by ideologically sympathetic allies, and caused crisis when executives were less trusted.

Colombia's 21<sup>st</sup> century militarization process initiated by Uribe induced seismic changes in an increasingly untenable civil-military dynamic. Civilians had established a pattern of, on one hand, outsourcing the maintenance of internal order to the military and, on the other, undertaking sporadic peace efforts that failed to reckon with the depth of security problems and military mistrust. As this study argues, decisions to pursue military solutions to internal security problems align the political fates of the presidency and the military. Uribe's militarization program exemplified this dynamic, producing a reconfigured order that superficially looked like a new equilibrium: intensified civilian management and Uribe's appropriation of credit for battlefield success were exchanged for resources, esteem, and protection from the worst outcomes, including prosecutions.

Yet as the argument in Chapter 2 suggests, the militarization program was partially self-undermining. Unceasing demands for results and polarizing rhetoric fostered conditions for scandalous abuses. Revelations of the scale of misdeeds weakened the credibility of the presidential-military alliance and validated the groups that had warned about militarization all along. In this context, the decision to internationalize the conflict, which initially benefited the military and its social order coalition partners by providing huge resources, boomeranged. As the following chapter will elaborate, rights groups' use of international leverage to push for

accountability—and Colombia's vulnerability to material leverage—helped dent military autonomy and raise tensions within the social order coalition. As it turned out, the personalized nature of the civil-military equilibrium under Uribe rendered it fragile.

These tensions were increasingly visible following Santos's accession to office as a *policy inheritor*. A central premise of my argument is that a policy inheritor is less tightly tied to the generals than a militarizer and therefore has more flexibility to pursue policy alternatives. In the case of Santos, this meant an ambitious, stubbornly committed endeavor to forge peace with the FARC. The social order coalition—particularly the military—viewed the effort as a threat, driving a wedge into the political configuration that had characterized the Uribe presidency. With a weakened social order coalition and sustained international pressure, the military was unable to protect itself from increasing judicial accountability.

Colombia's evolution also calls attention to the limits of either civilian policymakers or the military to fully control the terms of the debate. Once the human toll of militarization had increased the salience of military accountability at the international level, civilians were unable to put the genie back in the bottle. Even when Santos deemed it necessary to bow to military opposition, the costs of full acceptance of military preferences were too high, and no new equilibrium was reached. In short, militarization can be disruptive to military autonomy—especially in countries with strong, transnationally linked civil societies. This disruption does not make the military or its allies less powerful, however, so while Colombia has so far avoided crisis, it is also unclear what the future of democratic oversight holds.

## CHAPTER 4

### MURDER, ACCOUNTABILITY, AND BACKLASH IN COLOMBIA

#### Introduction

Colombia was an improbable setting for a dramatic shift in judicial accountability. As described in Chapter Three, during the early to mid-2000s the influence of Colombia's social order coalition was at a peak. President Álvaro Uribe enjoyed enormous approval both at home and in Washington, and the Colombian military had regained control of its image after hitting a nadir in the late 1990s. Yet by 2017 over 1000 soldiers had been convicted for murder in civilian courts in Colombia, and officers at the highest ranks were feeling prosecutorial pressure. What caused so many killings to occur, and how did prosecutions for these abuses become routinized in Colombia? How was the social order coalition able to mobilize for a counter-reform, and why were its effects limited? What was the mix of domestic and international factors that affected the prosecutorial wave?

This chapter will focus on the conjuncture in which such routinized prosecutions became possible. In brief, Colombian rights advocates constructed an oversight coalition that effectively sustained pressure on the state both at home and in the international sphere even at the height of social order coalition power. When scandal erupted—in the form of revelations about an epidemic of extrajudicial executions carried out by the military—the oversight coalition was able to shift cases from the military justice system to civilian courts, where the military's power to block prosecution and conviction was much lower. Accountability efforts were aided by a key structural factor: the density of Colombia's security ties to the U.S., which gave the oversight coalition a material hook for reform pressure. This combination was sufficient for a trickle of prosecutions. The sustained prosecutorial wave, however, required another factor: the arrival of a new

administration in Colombia that undertook to a major policy shift—a peace process with the FARC guerrillas. The peace process was a double-edged sword. On one hand, it exacerbated tensions between the president and the military, weakening the social order coalition. In this context prosecutions became routinized, although they remained controversial. On the other hand, it provided the opportunity for a spoiler role, which enhanced military leverage to reassert autonomy. Despite the rebalancing of power as the signing of a peace accord neared in 2016, the inability of Colombia's armed forces to insulate themselves from accountability for rights abuses during militarization was apparent.

The chapter will begin by explaining the unlikelihood of the routinization of prosecutions in Colombia. During much of Colombia's modern history, the military was protected from accountability by both political norms and legal strictures. Even as direct state repression increased and subsequently transformed into cooperation with paramilitaries, accountability was rare in incidence and weak in form. The next section will discuss civil society's reaction to this violence: the creation of Colombia's rights movement as the core bloc in the emergent oversight coalition. Starting in the 1980s, rights advocates established a network that facilitated access to international organizations and led to a professionalization of oversight advocacy during the 1990s.

The next section discusses the massive changes wrought by Plan Colombia and militarization. During the first half of the 2000s, the social order coalition was strengthened by military success and strong support from the U.S.—but human rights conditions attached to military assistance provided a hook for sustained pressure regarding military accountability. By 2007, revelations of systematic murders by the military combined with changes in the partisan structure of U.S. politics, produced a change in one key variable: the level of international pressure, which resulted in an incipient shift toward greater legal accountability. The following section



shows how a shift in the other key variable—social order coalition strength—reinforced legal pressure on the military, resulting in the prosecutorial wave (see Table 4.1). This section focuses on a specific type of extrajudicial executions—so-called “false positives”—that were a direct result of militarization.

As the following section shows, the military was not powerless: the generals and their allies pushed for a counter-reform that sought to shift many cases from civilian courts to the military justice system. The oversight coalition thus focused on preventing backsliding, with a partial victory for each side. I suggest that the accountability wave created a credible commitment problem between the president and the generals: given the oversight coalition’s demonstrated ability to disrupt attempts at reinforcing military autonomy, mistrust pervaded the civil-military relationship. The final section describes the effects of this atmosphere of uncertainty as the Santos administration worked to finalize the peace accord with the FARC, focusing on contestation of the scope and authority of the transitional justice system intended to seal Colombia’s shift from war to peace.

TABLE 4.1: INDEPENDENT AND OUTCOME VARIABLES IN COLOMBIA

	<b>2002</b>	<b>2006</b>	<b>2010</b>	<b>2014</b>	<b>2017</b>
<b>International Pressure</b>	Med	Med	High	High	Med
<b>S.O.C. Strength</b>	High	High	High	Med	Med
<b>Outcome:</b>	<i>Enduring Autonomy</i>	<i>Enduring Autonomy</i>	<i>Contingent Reform</i>	<i>Routinized Accountability</i>	<i>Contingent Reform</i>

TABLE 4.2: TIMELINE OF MAJOR EVENTS: COLOMBIA

<b>Year</b>	<b>Event</b>	<b>Significance</b>
1978	Security Statute	Increase in military power and rights abuses
1985	Palace of Justice Siege	End of peace process; reassertion of military influence
1988	CINEP database	CINEP creates Human Rights and Political Violence Database, signifying professionalization of rights work
1991	Constitution of 1991	Democratization of Colombian governance structures
1997	Constitutional Court Decision C-358	Abuses of civilians by military members must be investigated by civilians and tried in civilian courts
2000	Plan Colombia	Initiation of major military-focused U.S. assistance package
2002	Election of Álvaro Uribe	Military offensive expands; demands for military results issued
2005	Directive 029	Internal Ministry of Defense document establishes bonus schedule for guerrillas killed in combat
2006	Ministry of Defense Appointment	Juan Manuel Santos appointed Minister of Defense
2006	U.S. Midterm Election	Democratic takeover of Congress increases rights pressure on Colombian government
2007/2008	Ministry of Defense Directives	Multiple Ministry of Defense directives issued to address extrajudicial executions
2007	UN UNHCHR Annual Report	Awareness of extrajudicial executions increases; oversight coalition mobilizes
2008	Media Revelations and Military Firings	Extrajudicial executions scandal becomes public knowledge, resulting in firing of 27 officers

TABLE 4.2: TIMELINE OF MAJOR EVENTS: COLOMBIA, CONT.

2010	Election of Juan Manuel Santos	Internationalist president Santos elected; alignment of president with social order coalition weakened
2012	Peace Process	Government-FARC peace process becomes public
2012	Jurisdictional Counterreform I	Constitutional amendment passed expanding jurisdiction of military courts (struck down in 2013)
2013	Prosecutions Accelerate	Number of soldiers convicted of extrajudicial executions reaches 250
2014	Santos Reelected	Santos narrowly reelected over Uribista/social order coalition candidate; Uribe elected to Senate
2015	Human Rights Watch Report	HRW report details responsibility of high-ranking military officers
2015	Jurisdictional Counterreform II	Watered-down constitutional amendment passed expanding jurisdiction of military courts
2016	Peace Accord Signed	Government and FARC sign peace accord, including transitional justice process

## Historical Overview:

### *Military Autonomy, State Repression, and the Stirrings of the Rights Movement*

For much of Colombia's modern history, the idea of routinized legal accountability, especially trials of soldiers in civilian courts, seemed highly implausible. In fact, until the mid-1980s the direction went the other way: under Colombia's nearly permanent officially declared states of siege, civilians were frequently tried in military courts, especially during the Alfonso López Michelsen (1974–1978) and Julio César Turbay (1978–1982) administrations. The basis of the military's exemption from civilian courts was Article 170 of the Constitution of 1886, which

read “crimes committed by military members in active service and in relation to said service, will be held in martial courts or military tribunals, in accordance with the prescriptions of the military penal code.” Just as in Mexico, the “active service” phrase was almost invariably embraced, and the implications of the “in connection” phrase ignored (Andreu-Guzmán 2003, 210).

Strong political norms complemented the legal protection. The so-called Lleras Pact, once established in 1958, set the military on a path of significant autonomy in operational matters (see Chapter 3). By the mid-1960s Colombia’s security threats, combined with prevailing Cold War norms throughout Latin America, had resulted in a doctrine emphasizing the concept of the “internal enemy” that fostered the tolerance—if not implicit encouragement—of rights abuses, including arbitrary detention and torture, in service of stamping out subversion. Under the sensibility of the Lleras Pact, civilians remained aloof from both strategic and tactical decision making on operational matters, and almost without exception deferred to military preferences regarding proper jurisdiction for soldiers.

By the mid-1970s, the Colombian government’s incapacity to establish a monopoly of force throughout the territory was increasingly evident, with scattered bands of rural guerrillas complemented by the propaganda-savvy, urban M-19 insurgent group. In 1977, during the López Michelsen administration, a national strike produced violent repression. Under the subsequent administration of Julio César Turbay, repression mounted. The robbery of the Cantón Norte military armory in December 1978 quickened a preexisting trend of mass detentions and torture (Gallón 1991, 14), often perpetrated by the military—which also adjudicated hundreds of cases involving civilians. During the 1980s the mutating nature of Colombian violence, driven especially by the rise of the drug trade, left the state struggling to respond. The nature of rights violations by the state shifted, with the abolition of Turbay’s Security Statute producing a decline in the number

of mass detentions and reports of torture. Several other violations, however, began to accelerate, including extrajudicial killings and enforced disappearances, many of them linked to budding paramilitary groups with ties to the military (Andreu-Guzmán 1990, 225-233).

Due in part to the greater visibility and social capital of the victims of abuses in Bogota, the stirrings of an organized human rights movement began slowly gathering force in the early 1980s. Groups connected to the left like the Committee for Solidarity with Political Prisoners (CSPP) and the Permanent Committee for the Defense Human Rights (CPDH) were complemented by university-based groups such as the Association of Families of the Detained and Disappeared (ASFADDES) and church-linked groups like the Center for Research and Popular Education (CINEP) (Tate 2007; Gallagher 2015, 161-164). By the mid-1980s links to South American peers had been established, and domestic groups had established regular cooperation with larger transnational groups like Amnesty International, which started issuing alerts and reports regarding Colombia in the late 1970s. Local “human rights committees” in Colombia’s regions began specializing in the art of the rights complaint (*denuncia*), with state security agents as a primary object (Tate 2007, Chapter 3).

### *The State Response: Military Impunity and “Inspector General Syndrome”*

The state and military response to accusations of abuses included two primary components: indignant denial and counteroffensive. Turbay, for instance, exemplified the former, responding to the negative rights characterization of his administration with a 1985 book insisting that denunciations of his presidency were utterly and universally baseless (Turbay Alaya 1985). The counteroffensive was represented by figures such as General Fernando Landazábal, the prominent general forced out as defense minister during the peace processes of the Betancur administration

(see Chapter 3). Landazábal wrote multiple, breathless books defending the principle of military autonomy as well as a doctrine that viewed human right complaints as a tool to weaken the military in service of undermining the authority of the state (see, e.g., Landazábal 1993).

Amid the hardline atmosphere of the period, government prosecutors imposed few checks on state action. In line with the general opening that characterized the first half of the Betancur presidency (1982–1986), however, a small uptick in prosecutorial vigor occurred. The locus of investigation and accountability was the prosecutor general (*procurador*).<sup>7</sup> The prosecutor general during the mid-1980s, Carlos Giménez Gómez, called attention to military misdeeds, earning the armed forces’ enmity with his January 1983 announcement that 59 of 163 identified paramilitaries were active-duty soldiers. In 1986 he bolstered this sentiment by denouncing the actions of both Betancur and Minister of Defense Miguel Vega during the siege of the Palace of Justice as violations of international humanitarian law (IHL). Absent agreement by the military justice system to transfer cases to civilian courts, however, prosecutors had little authority to seek accountability. Transfers of soldiers to the civilian justice system were not unheard of, but occurred voluntarily, in cases involving drunken brawls, theft, and involvement with drug trafficking, rather than rights violations that implicated the state’s response to public insecurity. The Disciplinary Tribunal, the entity that resolved jurisdictional disputes from 1972–1987, sided consistently with the military when jurisdiction was disputed; even torture, murder, and other crimes committed in collusion with paramilitaries would remain in military courts, since “active-service soldiers are *permanently* providing service” (Andreu-Guzmán 2003, 222, emphasis added).

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<sup>7</sup> The 1991 Constitution preserved the *procuraduría* but stripped its criminal prosecutorial functions, which were transferred to the Attorney General’s Office (*Fiscalía General de la Nación*). The post-1991 *procuraduría* acts as an inspector general, administering internal disciplinary measures for policy violations by all state entities.

While the obstacles to penal accountability were difficult to overcome, the office did occasionally apply its disciplinary power, which could include suspension and firing—a vexing possibility for career military officers. Thus, even absent criminal prosecutions, military officials in the 1980s and into the 1990s increasingly referred to “inspector’s syndrome” (*síndrome de procuraduría*), a supposed inability to fulfill their mission mandates due to false complaints made by guerrillas and fear that legitimate actions would be labeled as rights violations (Valencia Tovar 1992). Unlike Mexico, where accusations that rights groups were seeking to tar the military on behalf of drug traffickers lacked plausibility, links between some Colombian rights groups and armed insurgents were sometimes real (Tate 2007, Chapter 2). These ties supplied a potent rhetorical tool to the military and its social order coalition allies. Nonetheless, most accusations were made in bad faith, while those allegedly murdered by soldiers were dismissed as “vulgar and miserable common criminals” (Andreu-Guzmán 1990, p. 232).

#### *Human Rights, the 1991 Constitution, and the Internationalization of Impunity Contention*

Even as human rights protections continued to deteriorate in the 1990s, the Colombian oversight coalition harnessed increased funding and a relatively organized strategy to make significant progress toward consolidating networks into a cohesive movement (interview with Gallón, 2015). In addition to tighter domestic networks, rights groups established a consistent, vocal message in international forums, including both the inter-American system and various UN agencies. The 1991 constitution abetted their efforts; while it did not dramatically alter the boundaries of military autonomy (see Chapter 5), the explicit opening of Colombian jurisprudence to international law had an important effect for NGOs, enhancing the opportunity to establish a presence and build pressure on Colombia from within various supranational bodies (Ibid.). In 1992

rights groups began bringing cases to the Inter-American Human Rights Commission (Tate 2007, Chapter 2), which had already sent several country missions that resulted in damning reports on Colombian rights practices (Inter-American Commission on Human Rights 1981; 1993). In 1997 the UN Office of the High Commissioner for Human Rights (UNHCHR) opened a local office in Colombia, which would eventually serve a pivotal role as a hinge between domestic rights groups and the state (Gallagher 2015). The strings attached to funds and connections with more bureaucratized international groups centered on demands for professionalization so that Colombian groups could produce data that was consistent and convincing—and therefore fit for dissemination at the transnational level. Several of the organizations that emerged as part of this effort, especially the Colombian Commission of Jurists (CCJ) and Colombian-European-United States Coordinator (CCEEU) would become primary aggregators and clearinghouses for information on rights violations (Tate 2007, Chapter 4).

Meanwhile, the enormous increase in violence during the 1990s brought even more urgency to civil society efforts to mobilize pressure on the state for both responsiveness and accountability. Rights groups themselves—especially those tied more closely to the militant left—were under constant threat, and dozens of activists were murdered (Kirk 2003). Many crimes were attributed to the armed forces operating in conjunction with the various militias labeled as paramilitaries. Indeed, as violence accelerated, military-paramilitary cooperation became the paramount issue for the oversight coalition. A steady stream of reports by Human Rights Watch, Amnesty International, the Washington Office on Latin America (WOLA), and the UNHCHR echoed the urgent *denuncias* of Colombian counterparts in urging greater pressure by the international community to halt the violence.



Judicial accountability remained exceedingly rare. A seminal process involving a series of massacres between 1988 and 1990 in the town of Trujillo (Valle del Cauca department) served as a microcosm of the state of rights activism: during the Ernesto Samper administration, rights groups and state actors, including the military, formed the Trujillo Commission and engaged in unprecedented cooperation. The Commission gathered enormous evidence regarding specific perpetrators—again including military agents—but accountability was limited to state acknowledgement of the crime and reparations for victims. Despite pressure from both rights groups and, later, the Clinton administration, no criminal charges were filed against the most deeply implicated military officer (Tate 2007, Chapter 2).

Although not nearly sufficient to halt abuses or encourage accountability, Colombian rights groups registered some concrete achievements. The NGO-backed Law 288 of 1996, for instance, obliged the government to provide reparations for victims whose claims were certified at the IACHR or UN (Tate 2007, Chapter 4). The inclusion of genocide in the penal code in 2000 was a direct outgrowth of the efforts of rights groups to publicize the slaughter of the Patriotic Union (interview with Gómez-Suarez, 2015—see Chapter 3). Late in the decade efforts often focused on Europe, where national governments were perceived as far more helpful on rights issues than the drugs- and security-obsessed U.S. government. It is also important to note that the oversight coalition was not inclusive of all of 1990s Colombian civil society, large sections of which focused on humanitarian, peacebuilding, the rights of marginalized peoples, or even just anti-guerrilla mobilizing (Tate 2007, Chapter 2). Indeed, by the 2000s, a small but well-funded set of these groups would even be associated with the social order coalition (see Table 4.3).

TABLE 4.3: SOCIAL ORDER AND OVERSIGHT COALITIONS: COLOMBIA 2002-2017

	<b>Social Order Coalition</b>	<b>Contingent</b>	<b>Oversight Coalition</b>
<b>Uribe Admin.</b> (2002-2010)	<ul style="list-style-type: none"> <li>-Military (active and retired)</li> <li>-Uribe administration</li> <li>-Anti-guerrilla civil society</li> <li>-Right-wing press</li> <li>-Bush administration (White House/NSC/DOD)</li> <li>-Republican/hawk Democratic members of Congress</li> </ul>	<ul style="list-style-type: none"> <li>-State Department</li> </ul>	<ul style="list-style-type: none"> <li>-Human rights NGOs</li> <li>-Left-wing political parties</li> <li>-International NGOs</li> <li>-Dove Democratic members of Congress</li> </ul>
<b>Santos Admin.</b> (2010-2018)	<ul style="list-style-type: none"> <li>-Retired military</li> <li>-Uribe-aligned MCs</li> <li>-Right-wing press</li> <li>-Republican members of Congress</li> </ul>	<ul style="list-style-type: none"> <li>-Santos administration</li> <li>-Active duty military</li> <li>-White House/NSC/DOD (Obama)</li> <li>-State Department</li> </ul>	<ul style="list-style-type: none"> <li>-Human rights NGOs</li> <li>-Left-wing political parties</li> <li>-International NGOs</li> <li>-Dove Democratic members of Congress</li> </ul>

### **Plan Colombia, Conditionality, and the Salience of Judicial Accountability**

Meanwhile, amid the increasingly militarist atmosphere surrounding Colombia policy in Washington, the U.S.-based rights groups that cooperated with Colombian counterparts engaged in sharp debates about whether to work against Plan Colombia or push for the strongest possible conditions. Some groups, especially at the grassroots level, opposed the plan on principle, viewing it as an echo of U.S. support for murderous Central American militaries in the 1980s (Tate 2015, Chapter 2). Others viewed getting the paramilitaries out of the conflict as the top priority, given the sheer volume of abuses they were committing—which required strengthening the military (interview with senior rights advocate, 2016). As it became clear that a major aid package was coming, groups such as the Washington Office on Latin America (WOLA) and the U.S. Office on Colombia sought to include as many rights conditions as possible to Colombia aid. The legislation passed into law in July 2000 included multiple rights-oriented provisions directed at military accountability: rights-abusing or paramilitary-abetting soldiers were required to be brought to

justice in civilian courts; military commanders were required to suspend alleged paramilitary cooperators; military cooperation with civilian investigators was mandatory; and the state was required to increase the capacity of prosecutors within the military justice system (Miller 2000). In addition, some portions of military aid were subject to the Leahy Amendment, a 1997 law banning security assistance to foreign military units credibly accused of rights violations. The material leverage provided by these conditions, while superficially impressive, was limited by the inclusion of a presidential waiver that was invariably issued, starting with delivery of the first batch of aid in 2000 (Ibid.). Nonetheless, the conditions were characterized by rights advocates as a “flawed but useful tool” (Haugaard, Isacson, and Johnson 2011, 2), not least because of the built-in requirement for regular consultation between both Colombian and U.S. government officials with human rights organizations.

The focus on judicial accountability in Plan Colombia’s conditions both reflected and contributed to the emergence of this dimension of military oversight as the core of civil-military contention. Anthropologist and former WOLA Colombia analyst Winifred Tate, in her book on the origins and effects of Plan Colombia, emphasizes the fundamental role of “‘the ask,’ which articulates a specific action so that politicians can then claim the results as an example of their political power, responsiveness, and leverage” (Tate 2015, Chapter 2). Aside from the obvious fact that the Colombian military, as the primary recipient of funds, was a logical focus of conditions, military judicial accountability was a natural focus of “asks” by oversight coalition members for several reasons. First, military accountability is *important*, as an object of both retributive and deterrent functions of justice. Second, specific requests on the Colombian government were *appropriate*. In a seminal 1997 decision (C-358/1997), the Colombian Constitutional Court had ruled that human rights abuses inherently broke the “service link” that was required to keep

criminal investigations in the military justice system.<sup>8</sup> Moreover, military denials of any cooperation with paramilitaries were not credible—as U.S. diplomatic cables from the 1990s make clear, the U.S. government harbored no doubts about these links (Evans 2005). Rights groups, therefore, were merely issuing a reasonable request: established Colombian law must be complied with in the context of a well-established phenomenon.

A third reason for the focus on military accountability is that it was *observable*: adherence to jurisdictional requirements, as well as the number and success rate of prosecutions, are concrete and measurable—even if the information is not always easily obtained by either the public or rights advocates. This observability contributed to a final benefit of focusing on judicial accountability: it was *advantageous*, as the law offers favorable terrain for rights advocates relative to the military. Latin American rights advocates have decades of accrued experience circulating through supranational venues within the UN and Inter-American systems—venues that provide additional layers of verifiable obligations on the Colombian state. For the most part, international law has evolved in accountability seekers’ favor. The Inter-American Court of Human Rights, for instance, basing its rulings on language contained in the International Covenant on Civil and Political Rights and the American Convention on Human Rights, has repeatedly ruled that crimes against civilians should not be pursued in military courts (Human Rights Watch 2009a, 68-72), as such proceedings violate the due process rights of the victims and thus “perpetrate a second injustice on the victims and survivors of state-sponsored atrocities (Kyle and Reiter 2012, 28). Mexico and Colombia are among the states that have been subject to binding rulings that they stand in violation of treaty obligations when military courts judge soldiers in cases involving abuses against civilians. Although the Inter-American Court’s compliance power is limited, these rulings delegitimize

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<sup>8</sup> In the Court’s language, “the prerogatives and investiture held by security force members lose all relation with service when they are deliberately used to commit common crimes” (Carrillo 2012, p. 6).

military autonomy and increase the political cost. Rights advocates therefore operate with confidence that greater expertise in the legal domain provides an advantage relative to the military, which in rights abuse cases often faces the difficult task of defending the seemingly indefensible. This expertise and confidence distinguishes judicial accountability from the operational, doctrinal, and organizational dimensions of civil-military relations. While oversight advocates may venture opinions on these issues, military expertise is comparatively high, which translates into policy power (Dargent 2015).

It is not the goal of this study to show that military accountability is yet another policy area to become “judicialized” (Sieder, Schjolden, and Angell 2005). On the contrary, the case studies show that politics predominates in civil-military relations. Oversight coalition members were not naïve: the historic lack of military judicial accountability—not just in Colombia but throughout Latin America—meant that few expected rapid transformation. But the emphasis on military accountability reflected existing advantages and provided tangible leverage to denounce abuses and channel pressure into positive change when circumstances became more favorable.

## **The Uribe Era: Militarization, Battlefield Success, and Human Rights Scandal**

### *Uribe’s Rise: The Social Order Coalition Ascendant*

The two administrations of Álvaro Uribe (2002–2006; 2006–2010) demonstrate the first several phases of the framework elaborated in Chapter 2. During the first term, militarization produced a strong, coherent social order coalition that helped protect the military from significant scrutiny. Autonomy was not absolute: the oversight coalition was able to harness its international links and material leverage to make an occasional dent. Overall, however, the fortunes of the social order coalition were at a zenith, while the oversight coalition endured what one rights advocate

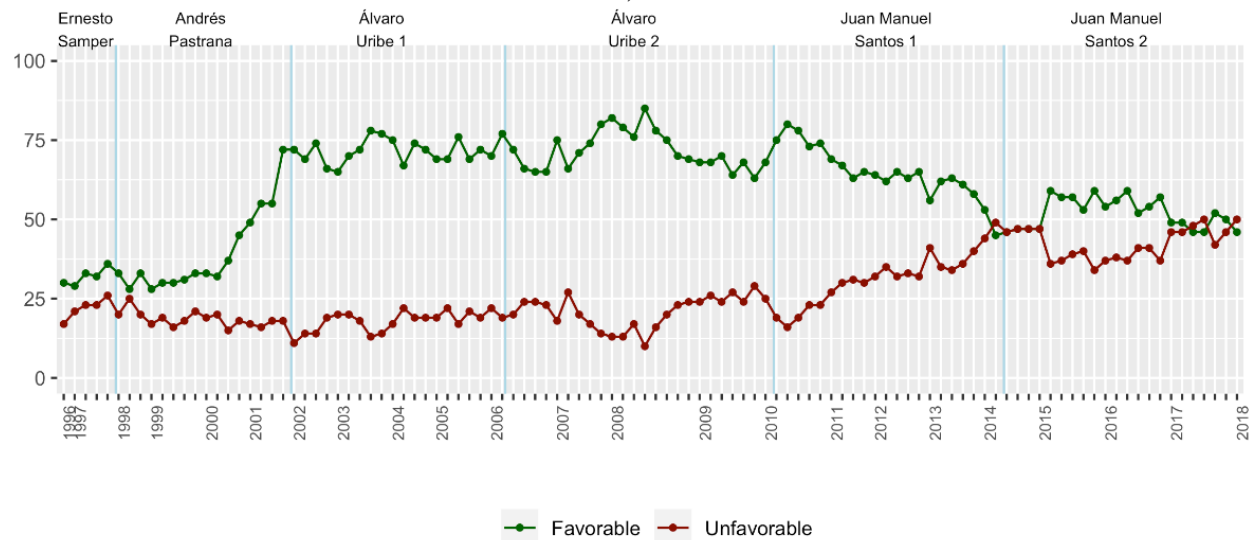
described as the “dark years” (interview with Isacson, 2016). During Uribe’s second term, however, the situation changed dramatically. Although his popularity and the social order coalition’s strength within Colombia remained high, revelations of the scale of military abuses, combined with an increase in scrutiny from the U.S., pushed international pressure sharply higher. This pressure disrupted the equilibrium of high military impunity, setting off a series of political and legal battles that had not ceased by 2017.

At the core of social order coalition strength during the first two Uribe years were two factors: battlefield success and external support. The transformation of the Colombian military was already well underway by the time Uribe took office, but the offensive reached maturity under his watch, especially during Plan Patriota (see Chapter 3), which pushed the FARC from strongholds in central and southern Colombia toward more remote regions. The rate of the crime that most terrified urban Colombians—kidnapping—plummeted. Although relations between civilians and the uniformed services were not always completely placid, the frictions that arose were barely on the public radar. Uribe’s approval ratings soared (see Figure 4.1), and the Colombian Congress’s traditional pattern of subordination to the executive was exacerbated (García Villegas, Uprimny, and Revelo 2009, 333-335). The strong position of the social order coalition also manifested in a lack of cooperation from civilian prosecutors under the leadership of Attorney General Luís Camilo Osorio, who was described by Human Rights Watch as deliberately undermining nascent efforts to seek accountability in cases involving the military (Human Rights Watch 2002).

Uribe’s highly polarizing style reinforced the divide between the two coalitions. His penchant for stigmatization of human rights defenders echoed the rhetoric that hardline military members had dispensed for years. During his first term, however, his vehemence caused little trouble among backers in the U.S. On the contrary, his Manichaeian style was a good match for the

militarist atmosphere that pervaded Washington following the September 11 attacks. Given the dramatic improvements in security, Uribe's status was formidable, especially among Republicans, whose disposition toward him tended toward "hero worship" (interview with Haugaard, 2016). Predictably, the U.S. government prioritized Plan Colombia continuity over enforcement of human rights conditions. Progress on the accountability requirements was repeatedly certified to ensure the release of all appropriated funds, despite vocal NGO objections that the conditions had not been fulfilled. This refusal to use material leverage to push the Colombian government accounts for the assessment of international pressure in 2005 as medium (see Table 4.1 above).

FIGURE 4.1: ÁLVARO URIBE APPROVAL RATINGS, 1996–2018



Source: Gallup 2018

Human rights groups could point to some effects from the Plan Colombia conditions. Delays in certification until the last moment helped keep cases front and center, and funding provided through USAID to the attorney general's office paid for multiple capacity-building programs, including the human rights units and the forensic training that would be crucial in subsequent prosecutions. However, amid the overall context of high social order coalition strength and medium international pressure, successful disruption of the high-autonomy civil-military

equilibrium was implausible. Members of the oversight coalition therefore sought to emphasize international solidarity and focus on the most urgent rights abuses, many of which were perpetrated by paramilitaries. Given the horrors inflicted by these combatants (Kirk 2003), ending their reign and holding them accountable occupied an understandably prominent place for both U.S. government officials and many activists. Even after the demobilization of 30,000 fighters in 2005, the terms of their submission to justice was a priority feature of both bilateral relations and civil society activism during the mid-2000s.<sup>9</sup>

### *The “False Positives”: Perverse Incentives, Military Murder, and the Seeds of Scandal*

One of the central premises of this dissertation is the inevitable correlation between militarization and rights abuses. One mechanism producing this phenomenon is the effect of constant demands for results by civilians and commanders. Colombia’s military revitalization was largely successful when judged by the social order coalition’s core metric of reducing the guerrilla threat and improving basic security. However, a set of perverse incentives connected to the constant demands for results produced one of the most dramatic scandals in the history of the country’s brutal conflict: the wave of extrajudicial executions that occurred in military units across the country from 2002–2008. The exact number of victims will never be known, but the scale is clear from several estimates. A CCEEU report in 2015 referred to 5000 documented cases; State Department reports in recent years have referred merely to “thousands” of victims (U.S. State Department 2016; U.S. State Department 2017), while the Prosecutor General’s Office had opened cases into 1,450 killings as of 2011 (Salazar 2012—see Figure 4.2) and 3,830 as of 2016 (Fiscalía

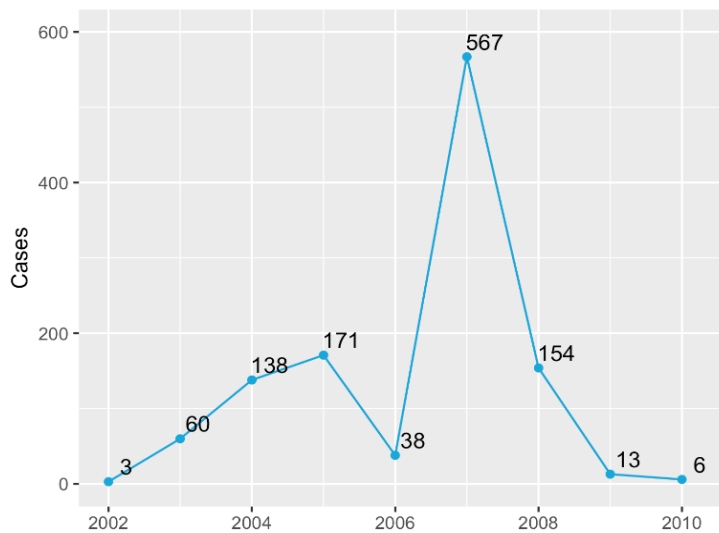
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<sup>9</sup> Some activists later acknowledged that from a long-term perspective, the ferocity of the critique might have been overstated, relative to the gains from halting paramilitary abuses (interview with Haugaard 2016).



General 2016, 380). To the chagrin of rights groups, the somewhat flippant label “false positive” quickly caught on in the media as a reference to a specific type of victim: individuals killed by the military and subsequently presented as guerrillas killed in combat, often in locations distant from the places they were apprehended.

FIGURE 4.2: CASES OF “FALSE POSITIVES” EXTRAJUDICIAL EXECUTIONS, 2002-2010<sup>10</sup>



*Source: Salazar 2012, 404*

To be clear, neither extrajudicial executions nor false positives were a new occurrence. Aside from the numerous denunciations by rights groups, as early as 1990 a U.S. Embassy cable described the apparent murder of nine Colombians subsequently dressed as guerrillas (Evans 2009). The State Department’s annual Country Reports on Human Rights Practices routinely referred throughout the mid-1990s to extrajudicial executions in general, and false positives specifically. The language from the 1995 report is typical: “A persistent, if unofficial, emphasis by the army on body counts as a means of assessing field performance is a leading cause of

<sup>10</sup> Salazar’s (2012) numbers correspond to cases within the Human Rights Unit of the Attorney General’s Office, which does not handle all cases, making the figure significant undercount. The trajectory, however, is accurate.

violations of international humanitarian law. Both NGO and military sources reported that some units placed weapons in the hands of dead bodies in an effort to create the impression that they had engaged in combat as members of guerrilla forces” (U.S. State Department 1996).

Multiple features, however, made the 2002–2008 killings distinct from previous eras of rights abuses, and raised the probability that the scandal would disrupt military impunity. First, the increasing presence of the military throughout the national territory, combined with the demobilization of the paramilitaries, diminished the ambiguity of the identity of the perpetrator. Similarly, the identity of the victims was often unambiguous as well. Extrajudicial execution victims in the 1980s and 1990s, when there were more groups operating across a larger territory, could more easily be portrayed as guerrillas or guerrilla sympathizers. By 2007, when the killings started becoming consistent news, the idea that (to cite a prominent example) a day laborer in a grimy Bogota suburb was moonlighting as a FARC member hundreds of miles away lacked credibility.

A set of revelations regarding perverse military incentives contributed to the outrage. In October 2008 Colombian media revealed the existence of Directive 029 of 2005, which specified a series of benefits for soldiers and military units based on performance. Not only were the criteria for determining the legitimacy of kills vague, the directive incentivized killings of low-level fighters, since there was no limit on the number of rewards that could be collected for these combatants (*La Silla Vacía* 2009). Another directive from the period, unearthed and disseminated by Human Rights Watch in 2017, included a table establishing minimum numbers of kills and captures to qualify soldiers for distinguished service awards (Vivanco 2017). Testimonial evidence provides further evidence that the incentives mattered: multiple soldiers testified in judicial

proceedings that specific incidents were driven by material factors as simple as gaining time off around holidays (Acemoglu et al. 2016, 7; Human Rights Watch 2015a).

The military directives provided insight into the factors driving low-level soldiers to participate in the killings. Other factors, however, contributed to the plague of killings as well. Some analysts placed the incentives within the broader context of a body count culture that was well established in the military by the early 2000s, as well as the sheer level of degradation the conflict had reached by the early 2000s (interview with Velásquez 2015). But the most frequent factor identified by analysts and insiders was the pressure on officers created by demands for results issued by President Uribe and echoed by military commanders. This emphasis on results seemingly became institutionally entrenched: Acemoglu et al. (2017) showed that false positives were more prevalent in regions where a higher proportion of brigades were headed by promotion-minded colonels rather than established generals—a widespread problem, given the inadequate number of high-ranking officers caused by the military’s rapid growth (Borrero 2006). Adding to the tragic ironies, even the military’s strategic success contributed to the killings, by making encounters with actual armed insurgents far less frequent (Alston 2010, 12)

#### *Outrage and the Oversight Coalition Response: The Military Under Pressure*

Human rights networks’ efforts are more effective when issues involve “physical harm to vulnerable or innocent individuals” (Keck and Sikkink 1998, 27). Colombia illustrates this dynamic: national outrage did not reach a crescendo until September 2008, when *Semana* published a series of articles about sympathetic victims originating in the Bogota suburb of Soacha. This late awareness came to the frustration of the oversight coalition, which had been documenting and calling attention to a spike in false positives since 2003 (Gallagher 2015, 29). Indeed, not only

had domestic groups been raising alarms, but the UNHCHR office in Colombia had incorporated these findings into its annual reports and begun raising the issue in meetings with Colombian, U.S., and European officials (Salazar 2012). The former head of the UNHCHR office, Christian Salazar Volkmann, noted that officials from the presidency generally sided with the military, denying all such allegations. Cables from the U.S. Embassy mention the allegations from NGOs and the UN, but (pace Salazar's interpretation) rarely prioritize the issue until early 2007, when the UNHCHR's annual report noted a particularly dramatic spike in 2006 (U.S. State Department 2007).

During 2007 the rights advocates at the oversight coalition's core mobilized vigorously. The CCEEU established an Extrajudicial Executions Roundtable and organized a visit by European observers—in which then Minister of Defense Juan Manuel Santos downplayed the reports (interview with senior rights advocate, 2016). All of the prominent domestic rights organizations produced statements and reports, and Amnesty International, Human Rights Watch, WOLA, and the Latin America Working Group (LAWG) did the same, while bringing the revelations to the attention of members of Congress—which had placed a hold (imposed by Vermont Senator Patrick Leahy) on \$55 million in military aid (Romero 2007).

The late arrival of the Colombian media underscores the importance of NGO reporting as an indispensable element of sustaining oversight coalition pressure. Despite the volume of reports by rights groups, the national media paid little attention to the killings until the revelations of the Soacha killings in September 2008 (Salazar 2012, p. 410-413). Some of the victims lent themselves to sympathetic media portrayals, such as Leonardo Porras Bernal, a physically and developmentally disabled 26-year old from the Bogotá region who showed up dead over 400 miles from his home, presented as a legitimate combat kill in January 2008, a gun placed in his non-functional right hand (Gallagher 2015, 4). The outspokenness of the Soacha family members

helped amplify the message that the false positives represented unjust, indefensible deaths. While by late 2008 the accountability machinery was already moving (see below), the media portrayals of the Soacha victims, along with the disclosure of the scale of killings, serve as an emblematic example of a shifting “public transcript” (Scott 1992, cited in Tate 2007) regarding military culpability. Colombians had heard endless rumors about military complicity with malign actors for years, but the combination of explicit motives (the material incentives and the demands for results) and concrete evidence significantly diminished the credibility of military denials.

### *The Ministry of Defense Response: Cracks in the Esprit de Corp Wall*

Juan Manuel Santos was named defense minister for Uribe’s second term, just as the killings started to change from one among a multitude of rights grievances to a potential crisis for the military’s image. Santos’s early reactions to the scandal were mixed. On one hand, he echoed the generals by thundering against military critics in an October 2006 appearance in the Senate, accusing them of engaging in a “pantomime with clear political intentions” by leveling unsubstantiated allegations against honorable military officers (Gutiérrez Roa 2006). On the other hand, he directed a series of responses within the defense ministry that were unusually expeditious for a civilian minister. By the time it was revealed in the press, Directive 029 had been withdrawn and replaced with Directive 300-28 of 2007, which stated that guerrilla demobilizations and captures were to be prioritized over deaths in combat. Santos also reaffirmed a June 2006 accord between the defense ministry and the attorney general’s office requiring investigators from the attorney general’s office to be present at the scene of all combat deaths, formed a commission headed by Major General Carlos Suárez to examine the killings, and appointed a new head of

military justice, Luz Marina Gil, who authorized the transfer of extrajudicial executions to the civilian justice system with far less resistance than any of her predecessors (León 2010).

The event that signified a genuine disruption of civil-military relations, however, was the firing of 27 officers in October 2008 based on the Suárez Commission investigation, followed in short order by the resignation of the Army commander, General Mario Montoya. Montoya was a key figure in the saga; according to later testimony, he had pushed relentlessly for results, demanding “liters of blood” from soldiers in the fight against guerrillas (León 2010) and threatening to fire commanders who reported insufficient kills (Human Rights Watch 2015a, 27). Nonetheless, the dismissals and Montoya’s departure generated discontent within the military, especially among those who perceived that Santos was attempting to promote his favored officers and sideline those more closely tied to Uribe (León 2010).

### *Uribe vs. the Democrats Leads to Contingent Reform*

I argue in Chapter 2 that international pressure is highest when external actors can harness both material and reputational (shaming) leverage. By 2009 the level of international pressure on Colombia was high. The Uribe-U.S. honeymoon had ended in 2006, when the Democrats took over both chambers of Congress. The Bush administration maintained full support of Uribe—including the signing of a free trade agreement just weeks after the U.S. midterms. Powerful Democrats were firm in clarifying the new order. A senior staffer for Senator Leahy, Tim Rieser, played an authoritative role in maximizing the Democrats’ newly empowered voice. A senior rights advocate described his role, following the Senate power shift, in “reading the riot act” to State Department officials for their pusillanimity in enforcing rights standards on Colombia aid (interview with senior rights advocate, 2016). When Uribe visited Washington in May 2007,

Democrats including House Speaker Nancy Pelosi and Leahy each made clear the need for accountability on military abuses and murdered trade unionists before the trade pact would be considered (*Semana* 2007). Democrats refused to consider passage in the 2007-2008 Congress, and Leahy again temporarily froze tens of millions in aid in 2009, linking it explicitly to concerns about impunity for extrajudicial executions (*Semana* 2009). This willingness to use material leverage—and link it explicitly to rights accountability—indicates high international pressure.

Meanwhile, investigations in Colombia embroiled Uribe's congressional allies in controversy over ties to paramilitaries, and executive branch officials for spying on political opponents. A thread of alleged disrespect for the rule of law connected these issues with military resistance to judicial accountability, making it politically impossible for administration or the military to dismiss the scandal completely. Despite these pressures, however, the social order coalition's strength remained high. The military continued to consolidate control in large areas, Uribe's approval ratings, though down from their peak, remained in the high 60s (see Figure 4.1 above), and the president continued to be the dominant figure in Colombian political life. President Uribe's instincts continued to be sympathetic toward the military, limiting the extent of the initial accountability opening. Uribe and Montoya were closely linked; at the latter's suggestion, Uribe named General Óscar González Peña as the new Army commander despite accusations that González was similarly implicated in the killings. In repeated speeches between late 2008 and early 2010, Uribe nodded toward the need for accountability while emphasizing the problem of false accusations (see speeches cited in Human Rights Watch 2018, 32) or endorsing the idea that the accusations might demotivate the troops and threaten security gains (Uribe 2008).

The combination of high international pressure regarding military judicial accountability and a strong social order coalition suggests a status of contingent reform, which matches Colombia

in 2009. Although prosecutors managed 38 convictions (UNHCHR 2010, 9), they encountered serious obstacles. The UNHCHR reported threats and attacks on relatives of false positives victims and military justice noncooperation with civilian prosecutors (Ibid., 10). U.S. Embassy cables, meanwhile, reveal deep turmoil within the defense ministry: top brass sought to block General Suárez's investigation, and Army commander González referred to military judges who agree to transfer cases as "traitors" (U.S. State Department 2009). The inability or unwillingness of Uribe and his defense ministers to either fully block judicial processes or impose order on the armed forces is indicative of highly contingent reform.

## **The First Santos Administration: Peace Talks, Pushback, and the Politics of Accountability**

### *Military Mistrust and Attempted Commitment*

I contend in Chapter 2 that a *militarizer*—the president who, like Uribe, initiates large-scale mission expansion, is too tightly allied with the military for far-reaching accountability to occur. A *policy inheritor* like Santos, by contrast, may have only contingent ties to the social order coalition, providing the opportunity to pursue markedly different policies. The presidency of Juan Manuel Santos exemplifies this dynamic.

The transition from Uribe to Santos in August 2010 also heralded a significant change in the president's ideological and strategic disposition. The oversight coalition was relieved, as the Santos administration mostly abandoned Uribe's stigmatizing language toward rights advocates. For the military, the change was more ambiguous, given Santos's demonstrated willingness to overrule military preferences in response to external pressure. False positives judicial processes were not the only rights prosecutions riling the military, as the external pressure had also helped unlock older, long-stalled investigations. In June 2010 and April 2011, respectively, Colonel Luis



Alfonso Plazas Vega and General Jesus Arias Cabrales were convicted of forced disappearance during the 1985 Palace of Justice siege (see Chapter 3), with each receiving a prison sentence of over 30 years. The frustration aroused by watching society relitigate the military's strategy during the episode was exacerbated by the visibility enjoyed by Gustavo Petro, a former member of the M-19 guerrillas responsible for the Palace takeover, who was elected mayor of Bogotá in 2011.

Military dismay over false positives judicial processes was also starting to mount, though the prosecutorial wave was far from cresting. Although rights groups complained of delaying tactics by soldiers' lawyers and the lack of cooperative transfers of cases from military to civilian justice, the number of open civilian justice investigations kept growing, and the number of convictions went from 38 in 2009 to 148 in 2011 (UNHCHR 2012). Without the reassuring presence of Uribe in the presidential palace, uncertainty had grown enormously. Despite Santos's public rejection of the Arias Cabrales conviction (Washington Office on Colombia 2011a, 10), grumbling grew significantly, as did rumors of deliberate slowdowns in the pace of operations (see Chapter 3). In essence, military mistrust of Santos altered the nature of credible commitment on rights issues, lowering the value of Uribe-style rhetorical assurances and increasing the need for concrete obligations.

One conciliatory move was the appointment of Juan Carlos Pinzón as defense minister in September 2011, which represented the rebalancing of executive-military relations around a savvy, pro-military minister. More significant was a provision, offered in November 2011 as an addition to a sweeping judicial reform project, to amend Article 221 by adding a clause stating that "in all cases it will be presumed that the military's operations and actions are related to service" and that "when in such situations penal action is necessary, [cases] will be forwarded to Military Justice" (Uprimny 2011). The change would have essentially cancelled the substantial body of

jurisprudence that had accumulated—though never been wholly complied with—regarding the appropriate judicial venue for cases involving alleged military crimes against civilians.

### *Oversight Coalition and Legislative Disruption*

According to the framework in Chapter 2, the oversight coalition will seek to call special attention to concrete violations of established international law. Given the substantive importance of the proposed jurisdictional counterreform, its *prima facie* incompatibility with a core condition of much foreign assistance, and its vulnerability to law-centered complaints, oversight coalition mobilization was significant. In both the U.S. and Colombia it followed the well-established pattern of legal analyses, press releases, and formal letters to government officials; in Colombia it was also the subject of significant media interest. Important Colombian actors noted that critiques abroad were gaining traction: Human Rights Watch Americas division head José Miguel Vivanco engaged in an exchange of letters with Colombian officials (Human Rights Watch 2012a), and he appeared before the Colombian Congress and met with the attorney general and defense minister during an April 2012 visit (*Semana* 2012). The communications serve as an example of the oversight coalition's exploitation of its perceived legal advantage. A December 2011 letter, for instance, heavily emphasizes a message that the presumption of military service would leave Colombia noncompliant with domestic and Inter-American Court of Human Rights jurisprudence as well as UN Human Rights Council interpretations of international law (Human Rights Watch 2011a).

The amendment (along with several other controversial provisions) initially made it through several of the necessary readings in each chamber of the Colombian Congress, but Santos, Pinzón, and other top officials also felt obligated to repeatedly insist that false positives cases

would remain in civilian courts (Human Rights Watch 2012a). In late 2011 Pinzón appointed a “Commission of Experts” headed by prominent former Constitutional Court justice Manuel José Cepeda. The Commission argued that the presumption of service article should be stricken from the judicial reform bill, though it endorsed significant legal changes to help articulate more precise boundaries of military jurisdiction and specifications of military culpability in cases of civilian casualties (Amat 2012). Notably, Pinzón felt it necessary to explicitly deny that the removal of the article stemmed from NGO opposition (*Semana* 2012).

### *Ineffective Resolution and Continued Civil-Military Uncertainty*

To the frustration of rights advocates, when the revised bill appeared in September 2012, it too proposed sending nearly all crimes involving the armed forces to military justice—only crimes against humanity, genocide, and forced disappearance would be exempted, potentially resulting in false positives cases returning to military justice (Human Rights Watch 2012b). In the meantime, however, several factors had shifted. First, the Obama administration allowed the free trade agreement to take force in May 2012, eliminating a useful tool of material leverage. Second and more important, the Santos administration’s peace talks with the FARC became public that same month, and the administration was keenly aware of the military’s role as a spoiler in past processes (see Chapter 3). In this context, the constitutional amendment passed in December 2012, and implementing regulations were approved in Congress in June 2013, to a chorus of dissent from rights advocates (Human Rights Watch 2013a; Movice 2013; UNHCHR 2013).

The social order coalition’s satisfaction, meanwhile, was short-lived: in October 2013 the Constitutional Court struck down the bill for violating legislative procedures during its path to passage. The opinion of many legal analysts was that the Court had availed itself of the procedural

justification in order to avoid the dilemma of either a) dealing with an obvious clash of constitutional principles that would have pitted the new constitutional language versus previous Court language and Colombia's treaty obligations or b) further enraging the social order coalition, which was already wary of the Court's progressive-leaning jurisprudence on a variety of issues (interview with Constitutional Court clerk, 2015). Either way, the effect was to highlight the Santos administration's difficulty making credible military commitments.

The substantive importance of the language of Article 221 was apparent during the brief months in which the amendment was in effect. During this period, not only did transfers from the military justice system slow, but 48 cases were transferred back from civilian justice to the military system (UNHCHR 2014, 11). The attorney general's office, however, resisted full implementation of the counterreform, producing detailed internal directives justifying the continued transfer of false positives to the civilian system (Fiscalía General 2013). This position produced sharp fights with Inspector General Alejandro Ordoñez, who consistently operated as an advocate of the military and pillar of the social order coalition within the state. The essential problem was that there was no solution acceptable to all sides. If the military were to receive the "juridical security" (*seguridad jurídica*) it sought, the oversight coalition would call attention to state noncompliance with domestic and international legal obligations, leaving Colombia vulnerable to material and reputational repercussions. Adhering to these obligations, however, ensured not just continued resentment in the military, but a political opening for the now-alienated Uribista right. The Santos administration's difficulty establishing a civil-military equilibrium was unsurprising in such circumstances.

*Peace Talks, Coalitional Divides, and International Pressure: Toward the Prosecutorial Wave*

The framework of this dissertation suggests that advances toward democratic oversight are most likely when international pressure focused on military accountability is combined with a divided social order coalition—a status that describes Colombia in 2014 and 2015. Cracks within the social order coalition widened throughout 2014 and 2015, as the commitment problem exacerbated discontent with the peace process and the prosecutions. As noted in Chapter 3, a broader change in disposition by the Santos administration created increasing distance between Santos and the Uribista faction, splitting Santos away from the social order coalition’s core. First came détente with Venezuela, while from 2012 onward, the peace process played an increasing role in civil-military tensions. From the beginning, Santos’s peace process was dissimilar to peace efforts of the 1980s and 1990s. Although Santos was careful to avoid past presidents’ mistakes and included the military’s perspective when constructing his negotiating team, previous processes lacked a spoiler figure as singularly powerful as Uribe. The importance of Uribe’s opposition was twofold: first, his role as leader of the opposition forced a politically awkward reshuffling of Santos’s coalition. Second, although many of the Uribista rhetorical tropes echoed military opposition in the past, never had they been amplified by a politician with Uribe’s record, charisma, and depth of support in the U.S.

Given the political threat, the simplest path might have been to isolate Uribe and ensure military acquiescence by issuing promises to military officials of amnesty or forbearance regarding criminal prosecutions. The oversight coalition, however, stood in the president’s path, and the international community’s vigilance regarding military accountability remained high. While U.S. material leverage partially declined following the passage of the free trade agreement, a new source

of quasi-material leverage<sup>11</sup> appeared in the form of the International Criminal Court (ICC), which in 2012 issued an interim report on its monitoring of Colombia that focused on the false positives. The ICC's looming shadow was important because it affected the calculations of both military officials and civilian elites. High-ranking military officers obviously had a personal stake in avoiding ICC indictments, while elites focused on rejuvenating Colombia's international image feared the cost to Colombia's reputation. This level of international pressure eliminated any potential military strategy of intransigently demanding impunity, either immediately or as part of the peace process. Indeed, the success of the oversight coalition in raising the status of victims' rights during Colombia's decades of war meant that all sides understood from early on that transitional justice would be the outcome, not amnesty.

### *Prosecutorial Space and Routinized Criminal Convictions*

In addition, shutting down prosecutions was impossible not just because of external pressure but because of changes in the attorney general's office. First, prosecutors had gained experience while handling the wave of cases transferred from military justice in 2007–2008. Second, Gallagher (2015, 248-49) describes a micro-level effect: once confronted with the details of the false positives and the flimsiness of military denials (in at least some cases), prosecutors' self-identity required a commitment to the pursuit of justice. Finally, the pro-peace political and legislative coalition that Santos depended on to back his signature initiative after 2012 was supportive of prosecutions and prosecutorial autonomy, and had the support of the oversight

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<sup>11</sup> I label the ICC's leverage quasi-material because while it does not involve financial transfers, the prospect of indictments is more tangible than actions typically categorized as "shaming."

coalition at home and abroad. Meanwhile, the combination of Uribeismo and the pro-military faction within Santos’s coalition was powerful, but not as dominant as the 2002–2008 period.

Prosecutors took advantage of this political space, and the number of convictions continued to rise sharply (see Table 4.4). By 2014 judicial accountability in Colombia had reached a level I describe as *routinized accountability*. With several hundred convictions occurring each year—many of which brought sentences of over 30 years—convictions in individual cases were no longer treated as surprising or controversial outcomes in political discussion and media coverage—i.e., they became routine. By international standards, this volume of convictions represents an exceedingly rare outcome.

TABLE 4.4: AGGREGATE MILITARY CONVICTIONS IN “FALSE POSITIVES” CASES, 2011-2017<sup>12</sup>

Year	Total Convictions	Source
2011	148	UNHCHR 2012
2012	N/A	
2013	240	Gallagher 2015 (via Attorney General’s Office)
2014	796/890	UNHCHR 2015/Attorney General’s Office 2014
2015	817/838	Attorney General’s Office 2015/UNHCHR 2016
2016	610/903/961	Attorney General’s Office 2016a/ Attorney General’s Office functionary 2016/ICC 2017
2017	1414	U.S. State Department 2018

<sup>12</sup> Note: I reviewed all annual reports from the UNHCHR, ICC, and State Dept. 2011-2018; many did not include total convictions. Among Attorney General’s Office reports, only the 2012-2016 Report includes explicit statistics; other numbers sourced to the AG come from public statements. Dozens of additional reports from NGOs, the U.S. Government, and Colombian agencies also reviewed. Moreover, language about “convictions” versus “prosecutions” versus “investigations” is highly inconsistent, as is reporting on whether numbers refer only to false positives (an ambiguous category) or to all alleged murders by state agents—as well as if those agents are just military or also include police. Above numbers refer to false positives only and military members (not police) only.

*Commanders under Pressure: The Oversight Coalition Aims at Higher Officials*

Yet for the oversight coalition, progress was tenuous and unsatisfying. The attempted jurisdictional counterreform was considered a warning sign, and Santos's political fortunes were fragile as the 2014 election approached. More important, the convictions were concentrated on enlisted soldiers and junior or noncommissioned officers; as of the end of 2014, only 6 colonels (who were in charge of many brigades with high rates of false positives, per Acemoglu et al. 2017) had been convicted, and no generals (UNHCHR 2015, 13). NGO reports documenting the false positives phenomenon during these years invariably focus on this abridged accountability, while reports by foreign governments (especially the annual State Department human rights and rights certification reports) and the UNHCHR were more careful to balance the critique with recognition of the overall judicial progress.

With the wave of prosecutions indicating that the wall of impunity was at least cracking, oversight coalition members complemented their efforts to block the counterreform with an increasing focus on going after political heavyweights: the colonels and generals in command posts during the false positives era. The evidence of their involvement was substantial; as reported by Human Rights Watch in 2015, the notion that commanders were unaware of the actions of their subordinates at the brigade, company, or platoon level defied credulity (Human Rights Watch 2015a, 5-8). In addition, officers provided testimony that the career incentives were made clear from links in the command chain reaching all the way to the top. General Mario Montoya, the Army commander who had been forced out in 2008, was accused of making combat kills a central element in promotions processes (Ibid., 27) and of calling for "liters of blood" (Léon 2010).



## **The Second Santos Administration: Reaction, Peace, and Uncertainty**

### *Military and Social Order Coalition Reaction: Procedural and Political Resistance*

The social order coalition reacted to the peace process, convictions, and oversight coalition pressure with increasing alarm. Resistance came along at least three different axes: judicial resistance, political contention, and legislative proposals. First was judicial resistance. As numerous NGO reports chronicled, civilian prosecutors were repeatedly stonewalled when seeking documents or interviews at military facilities (Human Rights Watch 2015a, 70), while lawyers for military defendants used numerous tactics to delay judicial processes. Cooperating witnesses within the military were subjected to threats and intimidation, or worse: soldier Nixon de Jesús Cárcamo was murdered in custody in October 2014, while in 2013 the wife of a cooperating soldier was gang raped (Ibid., 71-73). Disclosures also pointed to conspiracy. In February 2014 *Semana* received hundreds of hours of taped conversations involving Robinson González del Río, a colonel accused of participation in dozens of false positives. In one of the most shocking moments, González discusses his predicament with the chief of the entire armed forces, General Leonardo Barrero, who suggests that González put together a “mafia” to discredit prosecutors; Santos fired Barrero after the leaks went public (Radio Caracol 2014). Also revealing were González’s conversations with powerful people, including an Army general, a CSJ magistrate, and several military justice officials, in which he makes clear his preference to have his cases transferred to the military justice system, where he and his interlocutors expect greater leniency (Human Rights Watch 2015a, 81-84). The conversations also hinted at significant corruption and strongly implied the use of economic incentives to influence González’s decision—and potentially that of other soldiers—regarding cooperation with prosecutors.

A second form of resistance was increased politicization and political contention, including tighter links between the military and Uribe. As described in Chapter 3, Uribe and his allies repeatedly received and publicized leaked military intelligence, and the retired officers grouped in ACORE argued vociferously against both the prosecutions and the peace process. Talk of “judicial warfare,” a staple of the officers’ resistance lexicon, was complemented by the theory of Santos selling the armed forces out in negotiations in Havana and the specter of *castrochavismo*. The idea that leftist ideology would gain a toehold was abetted by the presence within Santos’s pro-peace coalition in Congress<sup>13</sup> of left-wing political figures such as Deputy Iván Cepeda, a victims’ rights advocate with a long history of contention with the military and Uribe (Colectivo de Abogados 2018). The counteroffensive mounted in 2011 with the revelation that several recipients of reparations for the 1997 Mapiripán massacre had lied about murdered family members to receive funds. Although nothing called into question the massacre itself, military officials portrayed it as undermining the credibility of several of the military’s most frustrating opponents: the Inter-American Court of Human Rights, which had ruled against the Colombian state and required reparations, and the Lawyers Collective (CAJAR), which had represented several of the victims. It also provided a concrete example of the military’s longstanding stance that rights abuse allegations were plagued by “false witnesses.” During the 2014 election, which Santos narrowly won, Uribista candidate Óscar Iván Zuluaga pushed hard for votes among military families (active-duty soldiers lack the vote in Colombia), campaigning on benefits for the military, including a more powerful military justice system and ending pretrial detention for all soldiers accused of crimes (Arenas 2014).

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<sup>13</sup> The phrase “pro-peace coalition” is meant to denote a partnership limited to specific peace-related topics, since on many economic and social issues leftist legislators were firmly opposed to the Santos administration’s agenda.

### *Jurisdictional Counterreform II and Santos Administration Division*

The third element of social order coalition resistance was legislative and focused on a renewed push for jurisdictional counterreform that gained steam throughout 2014. The bill, a statutory law project, would have transferred all cases of homicide and all cases involving international humanitarian law to military justice (Human Rights Watch 2014). Once again, the motivation from the government side was not ideological; Santos's actions as defense minister had already revealed that maximal jurisdictional autonomy was not a strongly held personal preference. Rather, the administration's objective vis-à-vis the second jurisdictional counterreform was instrumental: dampening the military's deepening objections to the peace process while avoiding new frictions with the international community. These conflicting imperatives seemed no more practicable in 2014 and 2015 than they had been in 2012, and the legislation's path revealed intra-administration divisions and weak advocacy. Pinzón and military brass continued to argue for the reform in public and in the Colombian Congress, domestically and internationally, but other administration officials were more flexible, including Minister of Justice Yesid Reyes, who had criticized the first jurisdictional counterreform (Reyes 2012), and High Peace Commissioner Sergio Jaramillo (interview with justice ministry official, 2015). During the congressional debate process, different ministers offered conflicting visions in meetings with senators, and the president offered little leadership on the issue (interview with senior Colombian Senate staffer, 2015).

### *The Oversight Coalition Mobilizes Again*

Once again, the oversight coalition used its strength in legal argumentation and the concreteness of the "ask" against backsliding to mobilize against the proposed changes. Human

Rights Watch was at the center of advocacy against the jurisdictional counterreform, lobbying hard with U.S. and Colombian officials. The efforts reconfirmed the Colombian military's longstanding antipathy for José Miguel Vivanco, who one relatively moderate former general described as "very biased," while characterizing HRW's work as featuring "a bit of reality, a lot of manipulation" (interview with retired general, 2015). A June 2015 report alleging the command responsibility of many of Colombia's top military officials in the false positives scandal, including armed forces chief Juan Pablo Rodríguez and Army chief Jaime Lasprilla (Human Rights Watch 2015a), was a lead story in print and broadcast media.

As in the first counterreform project, the oversight coalition benefitted from a strong position vis-à-vis both Colombian and international law, as well as the certification conditions for U.S. assistance and the watchful eye of the ICC. The Human Rights Watch report was widely discussed at the State Department (interview with Birss, 2016), where the message to the Santos administration focused on "doing this the right way"—i.e., balancing accountability with respect for the concerns of Colombia's more enlightened military commanders (interview with senior regional bureau officer, 2015). Another official claimed that accountability for false positives (including resistance to the counterreform) had been a priority issue throughout the Obama administration precisely because of the need to find issues on which effectiveness was possible (interview with DRL officer 2016). The message from the administration and Capitol Hill had a visible effect: during a joint visit to Washington in April 2014, Reyes and Pinzón informed officials that the bill would be overhauled to remove the features most troubling to the oversight coalition (Masri 2015; León 2015). In the end, the bill that passed in 2015 (and was validated by the Constitutional Court in February 2016) was as close to a satisfactory outcome as possible: both the oversight coalition and the administration could claim partial victory, even as neither side was

fully satisfied. The takeaway, once again, was that even if the oversight coalition could not completely block initiatives to placate the military, rights advocates' power was sufficient to prevent a shift back toward a high-autonomy equilibrium.

## **The Peace Accord and Unresolved Questions**

### *Terms of the Peace Accord and Divide in the Oversight Coalition*

The irony of the jurisdictional counterreform debate was that it felt somewhat anachronistic even as the legislative debate spent months raging on. As rights groups focused their advocacy on pursuing senior officers and the pressures on peace negotiators increased, all eyes increasingly turned to the terms of the agenda item regarding transitional justice. In December 2015—more than three years into the talks—the two sides agreed that a Special Jurisdiction for Peace (JEP) would implement the transitional justice process and oversee resolution of all crimes directly or indirectly connected to the conflict. Minister of Defense Luís Carlos Villegas (Pinzón became ambassador to the U.S. in July 2015) declared that false positives would be included in the crimes, a position that became a routine talking point, despite rights' advocates attempts to argue the false positives were outside the conflict's scope.

The general reaction of the oversight coalition to the approach of a full peace accord was enthusiastic, but attempts to articulate priorities in the peace process had exposed some tensions within the oversight coalition as well. For many victims' advocates, the priority was truth and restorative justice (Uribe 2015), the achievement of which was worth forgoing some level of penal accountability. Not all victims agreed, however: in some cases where soldiers and officers had been tried and convicted, victims felt they already knew the truth, and that transitional justice would merely result in perpetrators walking free (Marín 2018). In addition, to the vexation of some

rights groups in both Colombia and Washington, Human Rights Watch continued to vocally pursue maximal accountability for military officials, raising tensions just as peace was within sight. In letters, reports, and interviews, Vivanco claimed that the terms of the agreement opened the door to impunity for high-ranking officers and amounted to violation of international law (Human Rights Watch 2015b; Human Rights Watch 2016a). The critiques were especially exasperating as they seemed to complement the intransigence of Uribe, who was leading a vigorous—and eventually successful—campaign for a “No” vote in the October 2016 plebiscite on the terms of the peace accord.

#### *Social Order Coalition Leverage and Protection of the Generals*

The “No” campaign’s unexpected victory provided significant leverage to the social order coalition to seek favorable terms as the government scrambled to renegotiate the accord. Although the plebiscite defeat was based more on perceived leniency toward the FARC than unduly harsh treatment of state agents, military observers of the accord revisions process (which did not require plebiscitary approval) asserted their weight. At the last possible moment, they demanded language in the transitional justice section that altered the definition of “command responsibility” as established under international law (Isacson and Sánchez-Garzoli 2017). Under the agreement’s terms, command culpability within the transitional justice system would take into account officers’ “knowledge based on the information at their disposal before, during and after the realization the respective conduct” (Human Rights Watch 2016b).<sup>14</sup> This differed substantially from the language

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<sup>14</sup> More specifically, according to Human Rights Watch (2016b):” First, whereas under international law criminal responsibility vests when commanders had “effective control” over the troops who committed the crime, the definition in the original agreement appears to require that judicial authorities within the Special Jurisdiction for Peace prove the commander had effective control over the criminal conduct itself. Narrowing the definition to effective control over the specific conduct rather than over the troops could mean many commanders who bear

of the Rome Statute that created the ICC, Article 28 of which holds criminally responsible any “military commander or person [who] either knew or, owing to the circumstances at the time, *should have known* that the forces were committing or about to commit” crimes within the ICC’s jurisdiction (Rome Statute 1998, 19—emphasis added). The language seemed designed specifically to protect the higher-ranking officers who had grown increasingly nervous about legal culpability for false positives.

As of the end of 2017, repeated complaints by the oversight coalition had failed to dislodge the momentum toward a narrow definition of command responsibility. A constitutional amendment passed in March 2017 that formally created the transitional justice system maintained similar language, as did the statutory language passed in November. The Constitutional Court—which in an earlier period had been considered an important guarantor of the “constitutional bloc” that kept Colombian jurisprudence integrated with international law—continued its recent pattern of demurral on military accountability questions when it confirmed the constitutionality of the March amendment. Review of the statutory language offered the Court another opportunity to address the inclusion of false positives in transitional justice and the scope of permissible lenience for commanders, but as of mid-2018 bureaucratic delays left the constitutional review process in stasis.

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criminal responsibility would avoid accountability before the Special Jurisdiction, given that it is often very difficult to prove the former in these cases.

Second, whereas under international law if a commander had reason to know and should have known of the crime (i.e. had constructive knowledge) they may be criminally responsible, the definition in the agreement appears to require that judicial authorities prove that the commander had actual knowledge of the crime. Likewise narrowing the definition of knowledge to actual rather than also constructive knowledge could mean many commanders who bear criminal responsibility would avoid accountability before the Special Jurisdiction, given that this too can be extremely difficult to prove.”

### *Back to Contingent Reform: The Stagnation of False Positives Prosecutions*

Despite the indications that false positives cases affecting all ranks would be shifted toward the transitional justice process, the November 2016 peace agreement specified that the prosecutors were to continue their work until the system was functioning, and prosecutions during 2016 and into 2017 initially continued apace. In March 2016 retired general Henry Torres became the first general arrested for false positives, and his trial began in March 2017. However, during 2017, some judges began freezing false positives proceedings and suspending orders of apprehension in response to arguments by military lawyers that the venue should be switched to transitional justice. The Supreme Court validated this practice as well as the conditional release of defendants and convicts deemed likely to qualify for transitional justice. Hundreds of soldiers applied for the benefits, and some judges interpreted the release option broadly, leading to confusing situations like the release of General Torres in August 2017, followed by a new detention order in December (Hurtado 2017). Even Colonel Robinson González, made notorious by the conspiratorial tapes and subsequently convicted in connection with dozens of false positives, was released in January 2018.

The combination of the 2015 jurisdictional counterreform and the easing of prosecutorial pressures caused by the shift toward transitional justice leads me to characterize the accountability status as of the end of 2017 as reverting to contingent reform. This change reflects continued social order coalition—especially military—strength, which was augmented by the fragility of the peace agreement and Santos’s declining political strength. Meanwhile, the divide in the oversight coalition, the prioritization of peace over strict accountability, and the sheer complexity of implementing the accord detracted from a focus on prosecutions. However, international pressure, in the form of the ICC, still threatened the government’s ability to forge a credible commitment. ICC chief prosecutor Fatou Bensouda made an official country visit in October 2017, and the 2017



interim report reconfirmed the ICC's focus on high-ranking officers, while sharply criticizing the command responsibility language (Office of the Prosecutor 2017, 30-35). In short, uncertainty continued to pervade the atmosphere of civil-military accountability.

## **Conclusion**

Colombia offers important lessons. Foremost is the fact that a significant expansion of a military's mission does not invariably result in sustained or enhanced military autonomy. Even along the single most contentious dimension of civil-military relations—judicial accountability—the military was unable to translate battlefield success and a tight partnership with the ruling coalition into insulation from prosecutions. As posited in Chapter 2, this change was directly tied to the dynamics of militarization. Several points are worth emphasizing:

- The “false positives” murders committed by the military were a direct result of the expanded military mission. President Uribe affixed his entire political identity to the project of achieving greater security through the application of military force—and consistently demanded concrete results from the troops he empowered.
- This occurred in the context of preexisting weaknesses in democratic oversight, meaning the military was accustomed to both autonomy and impunity. The combination of results demands, complete military operational control, and a tradition of impunity was a recipe for severe abuses.
- The shocking nature of the false positives scandal contributed to the prosecutorial wave that followed, but would not have occurred absent an oversight coalition that was able to build and sustain a coherent movement both within Colombia and abroad. Leverage from

powerful outside actors—particularly the U.S. government—to pressure the Colombian government would not have occurred without the sustained pressure from these groups.

- The routinization of prosecutions in Colombia also amounts to an endorsement of the oversight coalition's emphasis on concrete, measurable conditions on security assistance, especially ones that play to the oversight coalition's strength in the legal domain. Militaries will always have an expertise advantage in operational matters, but when rights violations are convincingly documented, international law favors the oversight coalition.
- The weakening of the social order coalition was another critical factor in the prosecutorial wave. President Santos, despite his thick ties to the social order coalition, pursued a peace process as an alternative to militarization. The rifts in the social order coalition induced by this policy change meant that Santos was more reliant on support from pro-accountability forces both in Colombia and abroad. Prosecutors used the diminished impunity pressure to pursue thousands of judicial processes.
- Given the persistence of military power and public insecurity, increased accountability was fragile, and the military was able to claw back some of its diminished autonomy. Though initial attempts at counterreform were unsuccessful, the military kept pushing—and engaged in political meddling—to maximize the probability of exploiting changed circumstances, such as Santos's declining approval and the failure of the peace plebiscite.
- Aside from substantive disagreements, a key contributor to civil-military tensions was the government's inability to make a credible commitment. Even when the oversight coalition could not achieve its preferences, pressure undermined the government's ability to provide the military the protections it sought.

Even the lessons from Colombia that seem normatively positive are not unambiguous ones. Indeed, from the perspective of oversight coalition members, the jury remained out regarding the meaning of the wave of convictions for false positives (interview with Haugaard 2016). They showed that Colombian institutions can work, but hardly amounted to an adequate redress of grievances, given the enormity of the crimes. For rights advocates, regardless of the outcome of the transitional justice process, the Colombian state's hesitance to prosecute the high-ranking officers who abetted or benefited from the killings limited the amount of credit due to the government for the thousands of convictions. It is somewhat more difficult to isolate a takeaway from the military's perspective, given that the voice of lower-ranking, active-duty soldiers was generally absent, while the loudest megaphone was possessed by the most recalcitrant wing of the retired officer corps.

The dissatisfaction felt by both sides, however, should not obscure the significance of the changes in judicial accountability since 2002. In a country with a history of nearly complete military impunity and insecurity so severe as to frequently receive the appellation "failed state," oversight advocates were able to impose a level of accountability nearly unprecedented for a state with no regime change. Colombia therefore reinforces this study's key analytical lesson: militarization is not incompatible with increased oversight, even in unlikely contexts.

## **CHAPTER 5**

### **MEXICO: DEMOCRATIC OVERSIGHT DEFERRED**

#### **Introduction**

Among developing countries, Mexico represents a somewhat unusual case: consistent military subordination to civilian authority combined with high autonomy. Since civilian control was consolidated in the 1930s, there is little record of military vetoes of policy, let alone a military coup or similarly direct intervention. Nonetheless, the level of democratic oversight over any dimension of military affairs remained extremely deficient throughout the remainder of the 20<sup>th</sup> century and into the 21<sup>st</sup>. A democratic transition in 2000 produced little change in civilian engagement or legal accountability. When militarization accelerated in 2006, the military was unprepared for the political pressures generated by subsequent events. Violent encounters between troops and organized criminals increased in frequency, evidence of abuses mounted, and rights advocates mobilized, heightening the potential for fissures between the presidency and the military.

By the end of the Felipe Calderón administration in 2012, Mexico faced unprecedented domestic and international pressure on the question of judicial accountability, a condition that continued into the subsequent administration of Enrique Peña Nieto. However, under both Calderón and Peña Nieto, the overall state of democratic oversight exhibited far more continuity than change. Levels of external monitoring and civilian expertise on military issues increased only slowly. Congressional oversight of the military remained just as scarce as it had in previous decades. No fundamental changes were made to the anachronistic institutional structure of the Mexican military, nor did civilian presence within the various military ministries increase. Though activists successfully put judicial accountability on the political agenda, actual prosecutorial

progress was halting. By the end of 2017, democratic oversight appeared to be regressing: despite sharp outcry from both domestic and international rights advocates, a long-sought military priority—a bill providing a formal legal framework for the anticrime mission—received legislative approval and was signed into law in December 2017.

What accounts for such limited advances during the militarization era? In line with the argument laid out in Chapter 2, structural and conjunctural factors combined to produce an inauspicious atmosphere for increased democratic oversight. Structurally, effective exertion of international pressure was hindered by Mexico's ossified defense model and reform advocates' weak material leverage. Moreover, the general dysfunction of Mexico's political system and sheer depth of rule of law problems resulted in limited progress toward achieving the obvious alternative to militarization: root-and-branch police reform. Given the ongoing lack of a credible alternative to the military's anticrime role, the social order coalition's strength wavered but never cracked, military power remained high, and politicians saw little upside in actively pursuing greater oversight.

This chapter proceeds as follows. First, I will describe the essential features of the "subordinated autonomy" that characterized the Mexican military under the single-party hegemony of the Institutional Revolutionary Party (PRI) in the second half of the twentieth century. I will then discuss the continuity in civil-military relations following democratic transition in 2000, and detail the forms and deficiencies of democratic oversight on the eve of militarization in 2006. In the third section, I will assess the core components of democratic oversight and changes (or lack thereof) as militarization deepened and produced novel political pressures on the Mexican state. Most of the chapter will focus on the lack of institutional change and civilian engagement throughout the first decade of militarization, albeit with some moments of dynamism. The main

battleground of democratic oversight—pressure for judicial accountability—will be briefly discussed but is detailed with greater specificity in Chapter 6.

TABLE 5.1: TIMELINE OF MAJOR EVENTS: MEXICO

Year	Event	Significance
1968	Tlatelolco Massacre	Massacre of Mexico City university students creates resentment over state use of military in repression role
1994	Zapatista Rebellion	Peasant uprising and military abuses draw global attention
1997	Gutiérrez Rebollo Scandal	Corrupt links revealed between military general/top anti-drug official and drug trafficking organization
2000	Election of Vicente Fox	Mexico transitions to democracy; military subordination to civilian authority holds firm
2006	Election of Felipe Calderón	Felipe Calderón elected president, immediately deepens militarization of anti-drug policy
2007	Merida Initiative	Signing of major security package with U.S. centered on military assistance
2011	Human Rights Reform	Constitutional reform plants seeds for judicial reform pressure
2012	Election of Enrique Peña Nieto	Election of “policy inheritor” president leads to attempted shift in security emphasis
2014	Passage of military justice reform	Legislation passed to limit scope of military jurisdiction
2014	Human rights scandals	Alleged Army massacre at Tlatlaya (June) and police-criminal massacre at Iguala (September) raise human rights pressure
2015	Rising violence	Renewed acceleration of violence reveals ineffectiveness of Peña Nieto administration’s security program
2015/2016	Cienfuegos interviews	Army leader Cienfuegos offers repeated interviews calling for formalization of the military’s internal security role
2017	Internal Security Law passes	Passage of legislation formalizing and potentially deepening military role

## **The Military and the PRI: Subordination, Containment, and Reliance**

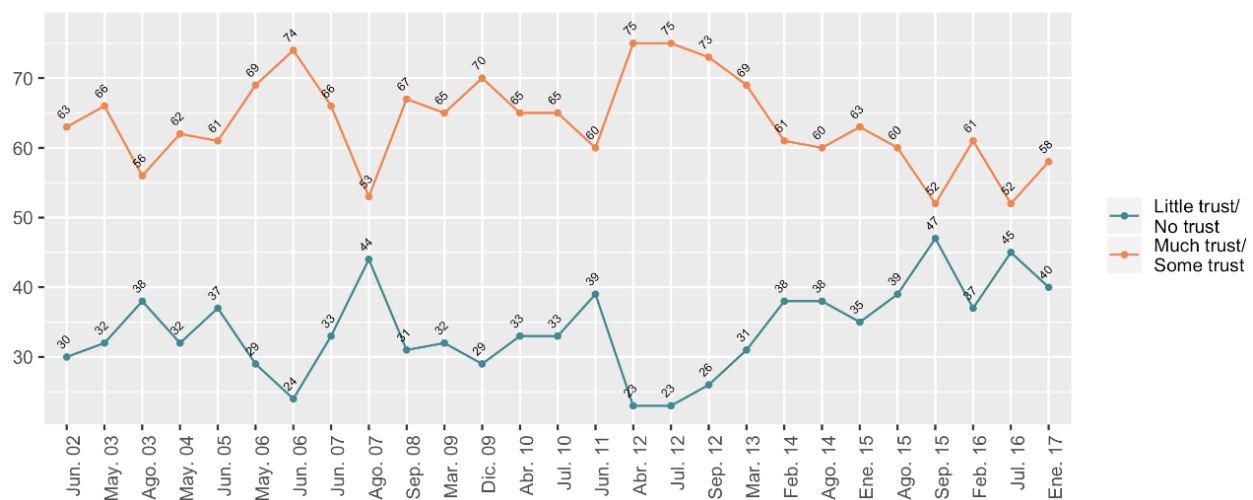
### *The Legacy of the Mexican Revolution: Subordinated Autonomy*

Within Latin America, the role of the Mexican military is *sui generis*: despite the Army's status as the heroic saviors of the Mexican Revolution (1910–1920), civilian elites—many of whom were high-ranking officers during the Revolution—acted strategically to coopt the generals and sideline the Army from political decision-making processes (Ronfeldt 1976; Serrano 1995; Camp 2005). Prior to the accession of President Miguel Alemán in 1956, all presidents had military backgrounds; since Alemán, none have. Instead, civilians formulated what has been referred to as an informal civil-military “pact” (Serrano 1995; Benítez 1999; Díez 2012). According to this arrangement, military subordination and restraint from meddling in politics would be rewarded with nearly complete autonomy in internal affairs, including personnel and budget decisions, operational planning, and internal discipline.

In the eyes of many observers throughout the second half of the 20<sup>th</sup> century—and within the military to this day—the system was a success, with the military complementing the PRI's modernization efforts by acting as a stabilizing force (Benítez 1994). In the evolution of internal military activity during the second half of the twentieth century, three roles played a prominent role in molding the civil-military dynamics leading up to militarization: service provision, social control, and anti-drug operations. With respect to the service provision role, large swaths of Mexico remained excluded from the “Mexican Miracle” (approx. 1940–1970) of economic growth and modernization. In these remote areas the military provided medical and dental services, promoted literacy, and assisted with basic infrastructure development. Military and civilian sources are nearly unanimous in citing the history of service provision as a primary factor in the

establishment of high military approval ratings, which have continued up to the present (see Figure 5.1). This high approval—especially relative to rising disapproval of most other state institutions—is relevant as a factor bolstering military strength vis-à-vis civilians in the democratic era.

FIGURE 5.1: MILITARY APPROVAL, 2000-2017



Source: *Parametría* 2017

### *The Military and Social Control: Abuses and Autonomy*

The diversification of challenges to the PRI regime prompted repeated episodes of Army deployment in its social control role, alternatively described as its “residual political role” (Ronfeldt 1976, 294). In the 1950s this role manifested in strike-breaking and suppression of local political disputes. In the 1960s the loci of political contestation shifted to rural insurgencies and urban university students; with respect to the latter, the assignment of repression duties to the Army culminated in the massacre of anywhere between 50 and 1000 students in October 1968 at Tlatelolco in Mexico City. This incident, which radicalized a portion of middle-class urban youth against the PRI and its agents, acted as an irritant to civil-military relations. The Army, resentful of the cost to the institution’s image produced by the carnage, became more hesitant to confront



nonviolent urban protesters, while also seeking increased resources for institutional professionalization in the early 1970s (Camp 2005; Aguayo 2015). Nonetheless, in response to the post-1968 violent turn among some state opponents—particularly rural peasants in Guerrero state—the military engaged in a dirty war-style anti-subversion campaign characterized by arbitrary detention, torture, and forced disappearance (see Chapter 6). No well organized domestic human rights movement existed to document the abuses, and the shadowy, low-intensity, rural nature of the many abuses (in contrast to the more systematic, visible brutality in other Latin American states) helped shield the military from international criticism and accountability pressure. In line with a pattern that endured in subsequent decades, the military was granted total operational autonomy in this period. Orders from the capital were to eliminate the threat; the idea of civilian oversight, let alone detailed rules of engagement, was simply not countenanced.

Despite some strains between the military and the PRI as social and economic conditions deteriorated during the 1980s, the Army undertook a similarly robust response to the next acute challenge-from-below to PRI rule: the New Year's Day 1994 rebellion by the Zapatista National Liberation Army in the state of Chiapas. Although the military had been aware—and had warned civilians—of brewing local tensions (Camp 2005), the timing and coordination of the rebellion took the country by surprise, embarrassing politicians and generals alike. The response was intense: the military increased its deployment in Chiapas from 2,000 to 14,000 troops and dispersed the rebels into the jungle, leading to a ceasefire in less than two weeks—but also producing contradictory public statements by Army officers and evidence of extrajudicial killings (Wager and Schulz 1994, 9-10; see Chapter 6).

As in the aftermath of 1968, the military was stung by criticism of its behavior. Indeed, with respect to the degree and effectiveness of scrutiny of the military by Mexican civil society,

the Zapatista rebellion can be viewed as a transition point between the Dirty War and post-2006 militarization. The media savvy of Zapatista leader Subcomandante Marcos (a non-indigenous Mexico City lawyer named Rafael Sebastián Guillén), combined with the romance accorded to leftist anti-globalization uprisings in the 1990s, meant that the uprising received unprecedented scrutiny both at home and abroad. Meanwhile, the enormous increase in the capacity of regional and global human rights networks (Keck and Sikkink 1998; Sikkink 2011) yielded more intense attention to military misdeeds than the generals were accustomed to.

Nonetheless, apart from attempts to defend the military's actions and deflect blame toward civilians, the military remained generally unresponsive to rights networks, and civilians in the government did little to push for more responsiveness. Among the primary targets of rights criticism was an element of Mexican civil-military relations that would prove particularly contentious later on: the expansive scope of the military justice system as interpreted under Article 57 of the Code of Military Justice of 1933. The article states that crimes against military discipline included those “that were committed by soldiers *in periods of service or* in connection with service” (emphasis added—see Chapter 6 for more). Broad interpretation of the italicized clause resulted in the nearly complete exclusion of military members from civilian courts—along with nearly complete impunity for abuses against civilians. In accordance with this policy tradition, investigations of military rights violations in Chiapas were conducted within the military justice system. In multiple cases in which evidence suggested extrajudicial executions and other grave crimes had occurred, the military refused to address evidence provided by rights advocates (Human Rights Watch 1996).

### *The Military and the Drug War: Continued Autonomy and Creeping Militarization*

The military's final key role, initiated in the 1940s, but gradually expanded starting in the 1970s, was a large-scale effort to locate and eradicate drug production, particularly that of marijuana and opium poppies. Two moments of stepped up deployments, in 1969 and 1976, marked the beginning not only of anti-drug militarization (Guevara 2016, 27-28), but also of the military's complicated relationship with U.S. anti-drug efforts. Operation Condor, initiated in 1976 with assistance from the Drug Enforcement Administration (DEA), was the Mexican government's hitherto most ambitious effort to disrupt the domestic drug industry through both eradication and arrests (Grillo 2011). With the U.S. demand for drugs continuing unabated, however, Mexico was (and remains) vulnerable to the impact of transnational drug flows. Starting in the mid-1980s, structural factors—especially U.S. interdiction success in the Caribbean Basin—generated an eastward shift in trafficking routes toward Mexico, with concomitant increases in the wealth and power of Mexican traffickers (Grillo 2011; Valdés 2013). By 1989, the National Development Plan issued by the administration of President Carlos Salinas included drug trafficking among the threats to national security (Arzt 2011, 65).

As the domestic impact of the drug war accumulated in the 1980s and early 1990s, cooperation with the U.S. government increased sharply. Importantly, the U.S. government has consistently played an important role in promoting the militarization of counternarcotics efforts in Mexico (Freeman and Sierra 2004). In both Mexico and Washington, the military has long been perceived as less corrupt than its civilian counterparts in the police and public prosecutor's office (*Procuraduría General de la República*, PGR). Repeated scandals involving civilian law enforcement—above all, the corruption-abetted murder of DEA agent Kiki Camarena in 1985—reinforced the pressure to find “uncontaminated” institutions (Benítez 1996, 8), a search that

inevitably drew attention to the military, with its reputation for loyalty, rectitude, and obedience to authority. However, given the strength of nationalist sentiment within the Mexican military (particularly the Army), deepening ties required careful cultivation, with the U.S. military in the lead rather than the DEA or the Department of Justice. A major initiative took place in the mid-1990s, when Secretary of Defense William Perry, appalled at the lack of bilateral cooperation (interview with Piccone, 2016), became the first U.S. defense secretary to travel to Mexico City, establishing lines of communication at a time when the Mexican government was already moving toward increasing military involvement. Indeed, by the Ernesto Zedillo administration (1994-2000) anti-drug deployments averaged 25,000 troops (Camp 2005) and military figures were increasingly placed in putatively civilian roles at the state and municipal levels.

Hopes that the military's internal culture could be harnessed to instill virtue and commitment in anti-drug efforts quickly encountered several reality checks. In 1991, a military unit, apparently acting in service of drug traffickers, killed seven civilian anti-drug agents (Golden 1995). Even more dire was the discovery in February 1997 that General Jesús Gutiérrez Rebollo, the head of the National Institute to Combat Drugs, was on the payroll of the Juárez Cartel. Throughout the Zedillo administration, the issue of potential corruption was a more salient feature of the militarization discussion than human rights abuses. Despite the occasional hesitation that graft revelations produced in U.S. policymakers, cooperation with Mexican anti-drug authorities continued and, in some ways, deepened as more Mexican soldiers arrived in the U.S. for training missions (Freeman and Sierra 2004). Moreover, the centrality of the drug war to bilateral relations and U.S. hesitance to upset the broader relationship meant that few officials were interested in imposing conditions on aid—a circumstance that would pose a persistent hindrance to reform advocates' efforts to increase international reform pressure.

*The Military and the 2000 Democratic Transition: Fatherland Over Party*

Despite the drumbeat of scandal revelations, the gradual expansion of the anti-drug role during the Zedillo administration did not yield significant changes in military operations or democratic oversight. Endless restructurings of civilian security agencies, often precipitated by corruption scandals (Arzt 2011) had no significant analogue within the military sphere. Civilians were no more accepted into defense policy and operational planning positions than they ever had been. Although coordination with the civilian intelligence agency (CISEN) and police increased, the overall trend was *away* from civilianization, with an increasing role for retired or active military members in nominally civilian police agencies at the federal, state, and local levels. As opposition presence in Congress increased, some legislators—particularly from the left-wing Party of the Democratic Revolution (PRD) did begin to play a slightly more vocal role, but no substantive oversight or notable legislation emerged (Díez 2008).

Mexico's human rights movement was an important actor at the time of transition, but was not nearly as developed as its Colombian counterparts. Among a small number of established rights groups, critiques of abusive behavior by state security actors were common, but electoral reform dominated civil society time and attention (Acosta 2010, 638). Not only did the post-1994 uptick in accountability demands fail to create support for military justice reform, the Supreme Court gave its imprimatur to the anti-drug and anti-crime role with decision 96/1, which provided a (thin, but politically viable) legal basis for public security-related military operations, as long as participation was formally requested by a civilian and subject to temporal and functional limits (Ríos-Figueroa 2016, 145-146). Finally, neither of two distinct types of scandal revelations highlighted by U.S. government agencies and by rights groups—corrupt ties to narcotics

traffickers or grave human rights abuses—prompted reassessment of the blanket application of military justice in lieu of civilian investigation.

Thus, at the dawn of the democratic transition the status of democratic oversight was extremely low along two of the three primary dimensions of democratic oversight: civilian engagement and legal accountability (see Table 5.2). On the third dimension—military noninterference in politics, Mexico performed somewhat more satisfactorily, albeit as a result of the sustained civilian deference associated with the “pact.” The importance of the military’s lack of meddling bears emphasis—simply by doing nothing to preserve PRI hegemony, the military played a crucial role in the transition. Mexico’s democratization, a product of the unsustainability of the PRI’s patronage-centered model of legitimacy-seeking amid ongoing economic crisis (Greene 2007), was characterized by enormous uncertainty, with the military’s allegiance to the PRI a central question. By remaining aloof, the military demonstrated clear allegiance to country over party, thereby effectively serving as the guarantor of the transition. There is little evidence that any explicit renewal or renegotiation of the civil-military pact was necessary to ensure military quiescence. Scholars have suggested that even before the 2000 elections, decentralization and alternation of power at the state level had exposed the military to political powerholders outside the PRI machine, providing reassurance that opposition to the PRI did not signify opposition to the military (Benítez 1999).

TABLE 5.2: DEMOCRATIC OVERSIGHT STATUS: MEXICO 2000

Dimension	Year	2000
Civilian Engagement		1
Legal Accountability		1
Military Noninterference		3

(All dimensions scored 1-5: 1=abysmal; 2=deficient; 3=moderate; 4=sufficient; 5=exemplary)

### **The Fox Administration: The Triumph of Continuity**

Despite the questions democratization raised regarding the nature of the civil-military pact, democratic oversight—and civil-military relations more generally—during the Fox administration (2000–2006) displayed far more continuity than change. The military’s institutional architecture remained unchanged, civilian guidance and legislative oversight barely budged, and accountability efforts were highly attenuated. The stagnation in oversight might at first glance appear surprising, for two reasons. First, during his campaign Fox had adopted an explicitly pro-rights, pro-state reform stance, including a truth commission empowered to clarify the abuses during the dirty war (Human Rights Watch 2006). Second, in contrast to the agreements that preserved post-transition military autonomy in regional peers (O’Donnell and Schmitter 1986; Karl 1990), there was no *formal* accord binding Fox to the institutional status quo. Amid this ferment, the horizons of some influential actors expanded even further: PRD leader Porfirio Muñoz Ledo, charged with leading a congressional committee on state reform, advocated the fusion of the multiple military agencies and ending the armed forces’ internal security role (Proceso 2000).

Other conditions, however, weighed against the prioritization of military reform in the early period of democratization. First, as sustained high approval ratings attest, the military did not suffer from the rights- or governance-based discredit that abetted reform efforts in states like Argentina (Barany 2012, 148-149). Second, the *informal* civil-military pact was deeply rooted, creating not just inertia but a broader set of endogenous constraints—particularly a total lack of military knowledge among civilians within the PAN and all other civilian organizations (Benítez 2001). Finally, the Fox administration inherited a set of military missions that were not easily transferred to other security agencies, including legacy counterinsurgency operations in Chiapas and Guerrero and, more crucially, the ever-expanding military anti-drug mission.

Thus, once the transition was assured, the balance of power and issue agenda suggested little reason to expect drastic change in civil-military relations. Yet Fox, eager to solidify his international image as a democratizer and partially indebted to rights advocates who, while opposed to the PAN's conservative ideology, worked hard on his behalf in order to vanquish the PRI, took several actions that suggested a commitment to judicial accountability. From the perspective of rights advocates, the high point of the Fox administration came early, with the creation of the Special Prosecutor for Social and Political Movements of the Past (FEMOSPP) and the naming of several widely-recognized rights advocates to government positions. Following up on Zedillo's incipient efforts, Fox acted to boost Mexico's participation in the international human rights scene throughout the first half of his term, reversing the PRI's jealous guardianship of sovereignty and inviting the UN to set up a permanent human rights office in the country (Saltalamacchia and Covarrubias 2011).

Implementing more controversial aspects of democratic oversight proved beyond Fox's will or capacity. The military was uncooperative with the FEMOSPP out of fears that officers



would face trials, while surviving former guerrillas were ignored (interview with military analyst 2, 2014). In addition—and in line with military attitudes in Colombia—officers’ attitude was that actions taken during the “dirty war” period merely involved compliance with missions assigned by the president in his role as commander-in-chief (Arzt 2011, 166-167). The fact that Fox’s choice for attorney general, Rafael Macedo de la Concha, was an active-duty general on leave from the military justice system was taken as an indicator that the military’s voice would remain privileged. Moreover, during the term the military asserted its prerogatives on several occasions. The generals engaged in multiple rounds of bureaucratic infighting with Fox’s national security adviser, Adolfo Aguilar Zinser, who was forced out after barely a year in office. An effort to involve Mexican forces in UN peacekeeping missions was essentially vetoed by the Army brass. When Fox requested that the Army send troops to Oaxaca to help contain a cycle of protests in 2006, the Army refused unless given a written order (Oliva 2012). The Oaxaca decision in particular was understandable: the Oaxaca protests had captured international leftist attention, triggering memories within the military of the reputational cost of the Zapatista suppression. Nonetheless, it was emblematic of how the process of fumbling toward a new civil-military equilibrium under a non-PRI administration had resulted in a modest increase in military interference in politics (see Table 5.3).

#### *Mexico’s Democratic Oversight Status: 2006*

As with the moment of transition, no evidence has come to light that the civil-military policies of the Fox administration reflected any explicit civil-military bargain. But the record is clear: on the structural level, Fox declined to push for the foundation of increased oversight—the establishment of a unified defense ministry—let alone seek replacement of active-duty officers

with civilians at the top of the Army and Navy pyramids. A constitutional reform in 2004, along with the National Security Law of 2005, provided a legal base for congressional oversight that has since been maintained (Benítez and Aguayo 2017, 296). However, the will to assert congressional authority proved nonexistent: no major legislative initiatives to increase oversight, no investigations, and a general attitude summarized by a member of Congress's quote to an academic interviewer: "who is going to mess with them?" (Díez 2008). On the plus side, legislators at least began receiving military chiefs to testify *in situ*—legislators had previously traveled to military bases to receive testimony (Arzt 2011, 256-57).

This lack of structural reform is endogenous to the weakness of democratic oversight in the post-2006 militarization period, when the importance of oversight increased even further. In particular, the confirmation of the existing institutional structure kept civilians excluded from positions within the Army and Navy. This lack of civilian presence, in turn, hindered the formation of a culture of civilian defense analysis and expertise in both Congress and civil society. Therefore, overall civilian engagement remained extremely deficient across all three components: civilian expertise, civilian presence, and legislative oversight.

Legal accountability, similarly, did not improve during the Fox administration. The FEMOSPP failed to produce any convictions, and there was no public evidence that the military justice system was prioritizing accountability in response to revelations of past abuses (see Chapter 6). Not only did the scope of the military justice system remain expansive, significant modification was not treated as an appropriate subject of policy debate, even as rights groups began to focus more attention on the topic. Military noninterference in politics, meanwhile, actually declined from a score of 4 (sufficient) to a 3 (moderate) on the basis of the Army's policy vetoes described above.

Meanwhile, pressure on the state to act more aggressively against drug traffickers increased. The Fox administration made several moves to enhance civilian capacity against organized crime, including reforms to the intelligence system and coordination mechanisms across different levels of power within Mexico's federal state. These actions, however, were insufficient to reverse trends in the drug trade, including the increasing power of Mexican gangs vis-à-vis the Colombian cocaine producers that previously dominated the international trafficking elite (Grillo 2011). Thus, the military's role in the drug war increased, with the crucial caveat that the street combat that would become routine after the 2006 militarization was still relatively rare. It is not clear that the lack of credible alternatives to the military's anti-drug role was determinant in the lack of progress on accountability, exemplified by the fizzling of FEMOSPP. Fox was an indecisive leader with limited political capital, confronting a vast array of pending issues amid the post-transition hangover. Nonetheless, by failing to prioritize greater oversight, the administration missed an opportunity to imbue the new democratic era with a spirit of greater oversight.

TABLE 5.3: DEMOCRATIC OVERSIGHT STATUS: MEXICO 2006

<b>Dimension</b>	<b>Year</b>	<b>2000</b>	<b>2006</b>
<b>Civilian Engagement</b>		1	1
<b>Legal Accountability</b>		1	1
<b>Military Noninterference</b>		4	3

(All dimensions scored 1-5: 1=abysmal; 2=deficient; 3=moderate; 4=sufficient; 5=exemplary)

## **The Calderón Administration: Militarization and Friction**

### *Introduction*

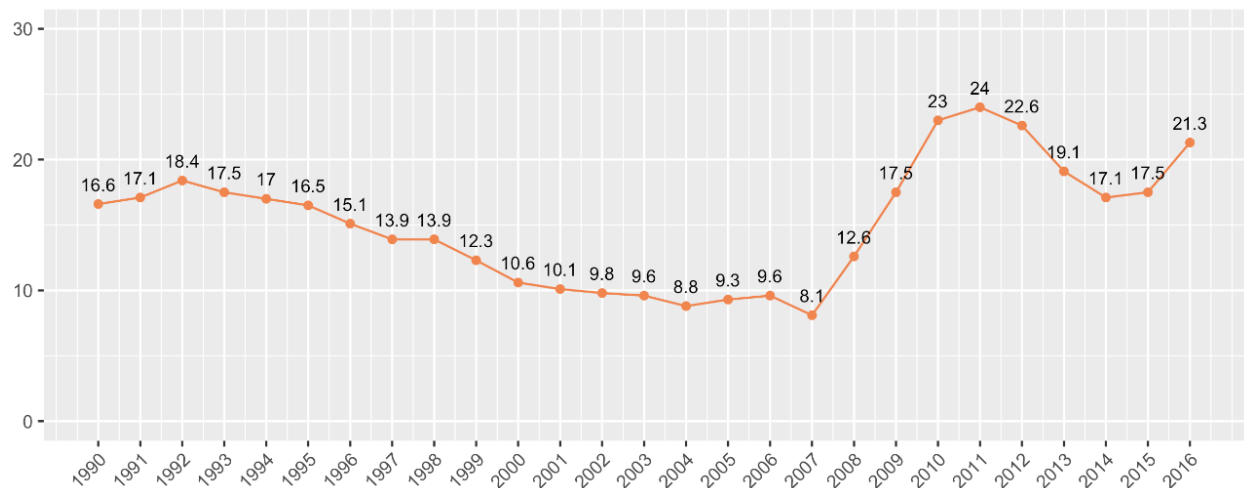
The level of violence in Mexico and the nature of the military's internal role changed dramatically during the 2006–2012 administration of the PAN's Felipe Calderón. Despite the Fox administration's disordered nature, Calderón benefited from PRI nominee Roberto Madrazo's reputation as an outmoded dinosaur and fears about the supposed radical populism of PRD candidate Andrés Manuel López Obrador. Balloting was extremely tight, with Calderón winning by a mere .5 percent. López Obrador supporters, alleging fraud, responded with months of protests that shut down parts of central Mexico City—including the entrance to the Chamber of Deputies, where the oath of office is given. Indeed, the presidential guard—a unit of the Army—was required to guarantee Calderón's access to the chamber (Garduño et al. 2006), providing a symbolic link between the Army and Calderón from the new president's very first moment in office.

### *Militarization: Rationale and Reaction*

By the time Calderón took office, it was apparent that democratization had caused a mere ripple in the domain of civil-military relations. The high-autonomy status quo had survived both the transition and the expansion of the anti-drug role. Against this backdrop, Calderón made the decision during the transition period to further accelerate Fox's militarized anti-drug policies after receiving briefings characterizing organized crime as being “in the living room” (meeting with Calderón senior adviser, 2017). The public unveiling came just 10 days after his accession, when the administration's top security officials gathered to announce the initiation of Joint Operation Michoacán. The decision to ramp up militarization was controversial. Calderón could point to a series of decapitations and other gruesome events, particularly along the border but also in

Michoacán (his home state), that had focused public attention on underworld power. On the other hand, Mexico’s homicide rate had been trending generally downward since the mid-1990s (see Figure 5.2). Upon announcing the decision, Calderón claimed that military operations were necessary since “organized crime seeks territorial control” (Benítez and Aguayo 2017, 367). Administration officials had more detailed analytical justification as well. Calderón’s first head of CISEN, Guillermo Valdés, later wrote that the administration was attuned to increases in the military power of the principal gangs and the impact of state corruption, although it did not recognize the degree to which changes in cartel structure and state institutional weakness amounted to a “perfect storm” of potential violence (Valdés 2013; Hope 2013).

FIGURE 5.2: HOMICIDE RATE IN MEXICO (PER 100,000), 1995-2016



Source: Heinle, Rodríguez, and Shirk 2017, 7

### *Militarization and the Armed Forces: The Influx of Resources*

Over the first year, the Army’s average monthly anti-crime troop deployment went from 20,000 to over 45,000 troops, with Navy deployments increasing by over one-third (Presidencia 2007). Joint operations were conducted in 15 of Mexico’s 31 states, while seizures of cocaine, marijuana and methamphetamine precursors spiked (Ibid.) Moreover, the homicide rate actually

declined slightly between 2006 and 2007. However, the administration's stated goals made it unlikely that the operations would be temporary; indeed, during the announcement of the Michoacán operation, Interior Minister Francisco Ramírez Acuña stated that "the battle against organized crime is just beginning and will be a struggle that takes time" (Presidencia 2006). In line with the framework in Chapter Two, Calderón played his role as the militarizer, signaling his alliance with the military in both symbolic and substantive ways. In January 2007, the president broke with prior protocol and appeared before the troops dressed in military garb (Daly et al. 2012, 6), signaling his dedication to the civil-military alliance. To help consolidate support, the president announced a salary raise that he claimed would benefit military members by an average of 45 percent (*Proceso* 2007). Whether military officials' traditional professions of hesitance toward the anti-crime role were sincere or not, rhetorical backing by the officers was similarly firm.

Additional resources poured in as well. The Army's budget rose by 25 percent between 2005 and 2007, and by 2009 was more than 50 percent larger in real terms (Benítez and Aguayo, 2017, 305-310). The Navy budget, similarly, was over 50 percent larger in 2008 than in 2005. The armed forces received another funding boost via the negotiation of the Mérida Initiative, a significant security-centered aid package from the U.S., signed in October 2007. Through the end of the Calderón administration, much of that aid came from deliveries of equipment useful for anti-drug operations, with the most expensive items, such as helicopters and surveillance aircraft, largely going to the Army and Navy (Guevara 2016, 46-47). While only in 2009 did Merida funds amount to more than 10 percent of the overall military budget, the consistent influx of \$100-200 million per year (much of it in the form of equipment) into military coffers represented an important contribution to the military's capital investment budget (figures from Benítez and Aguayo 2017, 305-310, 453).

### *Challenging Military Autonomy: Rights Abuses and Mobilization of the Oversight Coalition*

As I contend in Chapter 2, militarization policies—especially those which, like Mexico, greatly intensify military interactions with citizens—invariably produce human rights abuses. This is even more likely in countries with high preexisting levels of military impunity and little civilian influence within defense institutions. Given well established patterns from the existing military antidrug mission, Calderón’s new policy was subjected to immediate criticism by observers skeptical of both the wisdom of militarization as a policy solution and the military’s ability to implement the policy without engaging in rights abuses. However, coalescence of the oversight coalition into a force capable of exerting substantial pressure was not immediate. For one thing, Mexico’s rights coalition was still relatively nascent compared to Colombia and other Latin American peers. In addition, militarization was not a new phenomenon, so even if some level of rights abuses was predictable, the degree of violence and depth of the rights crisis that would soon afflict Mexico was unforeseeable.

Also in line with this study’s overall framework, the continuation of military operations and rise in reported rights abuses in 2007 and 2008 prompted the oversight coalition to cohere and mobilize international pressure for jurisdictional reform. Notably, the argument in Chapter 2 that the expertise advantage enjoyed by the oversight coalition will channel efforts toward judicial accountability is particularly relevant for Mexico. In part this is because of the Mexican military’s historic insularity: having avoided the scrutiny experienced by the Colombian military, the Army and Navy never had to develop a credible rights discourse or hone arguments regarding international law. In addition, lacking any civilian presence in the defense establishment, oversight advocates suffered from a major deficit in defense expertise and access to information—further incentivizing a focus on judicial accountability.

By 2010, Human Rights Watch, Amnesty International, and the Washington Office on Latin America, working closely with Mexican counterparts, had all produced reports focused on military impunity and begun lobbying policymakers. Groups working in Washington also successfully lobbied Congress to add rights conditions—including an explicit mention of military justice reform—to the Merida Initiative. As elaborated in Chapter 6, this focus resulted in increasing interactions in which Mexican policymakers were forced to confront the judicial accountability issue.

### *The Social Order Coalition Reaction: Defending Militarization and the Military*

The government response to reports of rights violations was characterized by defensiveness, with the military especially unprepared for the volume and tone of criticism. As one analyst stated, “NGOs speak a different language than security institutions” (interview with military analyst 3, 2014). When questioned about reports of abuses by the military—and crime in general—officials on multiple occasions denigrated victims and their advocates, seeking to marginalize their claims. President Calderón infamously dismissed the possibility that massacre victims in Veracruz and Ciudad Juárez were innocent, only for subsequent evidence to undermine his assertions (Open Justice Society Initiative 2016). Military officials repeatedly portrayed rights groups as either complicit with or manipulated by criminals seeking to smear the state (Joloy 2013) and diminish society’s confidence in the military (*Vanguardia* 2016). By labeling victims and advocates as criminals, officials implicitly transmitted a dual message: first, that no investigation was necessary to determine their criminal status; and second, that criminals forfeit rights. Coming from executive branch officials, such claims reinforced the president’s membership in the social oversight coalition. When military officials themselves made the claims, it was intended to reinforce esprit de corps within the ranks. By stigmatizing those making abuse claims, such



statements also gave a green light to intimidation tactics. Support for Calderón from the Bush administration, U.S. defense officials, and congressional Republicans illustrated the social order coalition's international scope.

Nonetheless, the military did not feel entirely secure amid spreading criticism. The Army, by far the larger and more important institution in historical terms, was particularly inflexible in its adherence to hierarchy and suspicion of outsiders as well as agencies such as the National Human Rights Commission (CNDH) (interview with retired general, 2016). Even the Mérida Initiative and the increased contact with the US it heralded at times contributed to military sensitivities: the Army reacted furiously to the Wikileaks revelations, especially a 2010 diplomatic cable that portrayed the Army as risk averse, abusive, and resistant to modernization (U.S. State Department 2010). Indeed, military fury allegedly pushed President Calderón to demand the ouster of Ambassador Carlos Pascual, which occurred in March 2011. Finally, episodes such as the counterproductive, abuse-laden Joint Operation Chihuahua (see Chapter 6) reinforced the military's interest in formalizing the deployment via an internal security law that would impose a set of rules on the scope and form of military actions.<sup>15</sup> However, Calderón did not prioritize the legislation, despite continued military requests.

What tools did the military possess to assert its priorities? Most aspects of civil-military relations are more difficult to discern in Mexico than Colombia, and suggestions that the military might violate hierarchy offend military sensibilities. Thus, unlike Colombia (see Chapter 3), none of the more than several dozen Mexican officials or civilian analysts I interviewed suggested that the military might protest by shirking in the most literal sense, that is, slowing the pace or extent

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<sup>15</sup> Indeed, the military's interest in such a bill had grown as a result of constitutional reforms made in 2008 to convert the judicial system from an inquisitorial model to an oral-adversarial one; though not designed as a rebuke to militarization, changes to Article 21 specified that "institutions of public security will be of a civilian character."

of operations. A second option is blackmail: as one former intelligence official observed, military intelligence, even if gathered in service of operational requirements, provides incriminating knowledge about public officials that can potentially be weaponized (interview with former intelligence official, 2016). The issue of threats as a source of military leverage is difficult to assess. No interviewee, even those most critical of both the government and the role of the military, offered any direct knowledge of such blackmail, and it fails to appear in press articles. Moreover, in such a hierarchical, president-centered system, influencing policy through blackmail would amount to a very high-stakes game of brinksmanship (interview with Poiré, 2014). Perceptions were essentially unanimous: over a dozen analysts and officials stated either unprompted or when queried that dependence on the armed forces to maintain basic order is the primary source of military leverage.

### *Justice Reforms and Tactical Concessions Plant the Seeds of Oversight*

The marriage between the military and the president that initiates militarization policies poses a formidable obstacle to deeper democratic oversight. However, these governments may respond to international rights pressure with tactical (window-dressing) concessions or use unrelated reforms to deflect attention. Despite the Calderón administration's unstinting defense of the armed forces, militarization was not the administration's sole rule of law initiative. Indeed, even as the military presence on the streets was deepening (and revealing its ineffectiveness), the administration was pursuing other paths toward improving civilian institutions. One was a major justice reform, passed in 2008, designed to transform Mexican criminal justice from an inquisitorial to an oral-adversarial system. Another was a set of attempted police reforms, including the implementation of strict vetting procedures and the establishment of the Federal Police—whose initial cohorts were drawn heavily from the military (Meyer 2014). Within the

realm of human rights, the Calderón administration could point to a landmark accomplishment: in June 2011, Congress approved a historic reform that, inter alia, altered Article 1 of the constitution to make explicit Mexico's obligations to incorporate treaty-based rights requirements into domestic law. Unblocking military justice reform was not the intent of the reform, but by clarifying the integration of international and domestic law, the reform was indispensable for subsequent progress on judicial accountability. On a technical level, it incorporated treaty obligations into Mexican domestic judicial system, giving the Supreme Court a direct jurisprudential path to bring Mexican law into closer alignment with Inter-American Court of Human Rights decisions. Politically, it signified acceptance of the more progressive jurisprudence often contained in those decisions—including in a number of cases in which Mexico's expansive military jurisdiction was the subject of litigation.

#### *Mexico's Democratic Oversight Status: 2012*

Despite the many controversies that arose, Calderón's management of basic civil-military relations issues was considered quite successful, with salary and benefit bumps helping to instill loyalty to the administration. In contrast to Fox, the Calderón administration faced no episodes of acute civil-military relations tension. Nor did most dimensions of democratic oversight experience substantial change (see Table 5.4), despite the carnage that accompanied—and was perhaps caused by—militarization. Along most other dimensions the pact remained largely intact: rising resources for the military, coupled with continued operational control and no pressure to alter institutional architecture.

With respect to civilian engagement, the sheer number of civilians in other ministries and growth of the non-military security establishment did help produce a deeper pool of civilians knowledgeable about the military role, but no reforms to increase civilian presence in the Army

and Navy ministries occurred. In Congress, neither the defense committees within each chamber nor the Bicameral Committee on National Security acted as a forum for debate of either the military's public security role or civilian management of the defense ministries. The defense committees were disproportionately composed of ex-military members, while the military used the lack of high-level security clearances among members of the Bicameral Committee to justify limiting the extent of debate (interview with Mexico analyst 5, 2015; interview with former intelligence official, 2016). With respect to management of resources, direct negotiations on overall budget levels were conducted between the Army and Navy secretaries and the Ministry of Finance (interview with Poiré, 2014), with the legislature essentially rubber-stamping budgetary provisions written at a high level of generality. The dramatic change in the scale and form of the military's internal mission failed to impel members of Congress to exert influence over civil-military policies, nor to dramatically change methods of internal management. While Mexico's first defense-oriented NGO, the Analysis of Security and Democracy Collective (CASEDE) was formed in 2007, it remained unique within civil society (interview with Mexico analyst 6, 2015).

Military adherence to the norm of noninterference in politics also changed little. The high command of both the Army and Navy, although unsettled by the increasing glare of the spotlight, was pleased with the influx of resources and, particularly in the case of the Navy, by the increasingly strong ties to the U.S. Aside from institutional support, opinion polling continued to indicate strong public support for both the military and the anti-drug mission, even as parts of Mexico descended into violent conflagration. While the pesky human rights NGOs and their scattered allies within the U.S. government and the broader international community warranted vigilance, the U.S. government prioritized mission continuity and a smooth bilateral relationship. Finally, given the inchoate status of the non-military elements of Calderón's rule of law program

and Mexico's dire public security situation, the possibility of scapegoating the military appeared unlikely. Given the imminent return of the PRI to the presidency in the figure of Enrique Peña Nieto, the military seemed justified in complacency.

Most civil-military tension in the second half of Calderón's term focused on legal accountability, and by 2011 the government was making what appeared to be tactical concessions on the military jurisdiction issue. Starting in 2010 and continuing until the end of Calderón's term in 2012, the government submitted legislation that would have shifted the boundaries of military justice, thereby demonstrating responsiveness to international critiques—but leaving intact protections for the armed forces. However, military officials made their displeasure with reform projects known, and the proposal failed to make it to a full Senate vote prior to the change of administration in December 2012 (see Chapter 6). Therefore, for all the increasing pressure over the lack of judicial accountability, the law remained unchanged, and the military was able to produce almost no examples of accountability for rights abuses (Human Rights Watch 2013b, 134).

TABLE 5.4: DEMOCRATIC OVERSIGHT STATUS: MEXICO 2012

<b>Dimension</b>	<b>Year</b>	<b>2000</b>	<b>2006</b>	<b>2012</b>
<b>Civilian Engagement</b>		1	1	2
<b>Legal Accountability</b>		1	1	1
<b>Military Noninterference</b>		4	3	4

(All dimensions scored 1-5: 1=abysmal; 2=deficient; 3=moderate; 4=sufficient; 5=exemplary)

## **The Peña Nieto Administration: From Recalculation to Retrenchment**

The framework described in Chapter 2 contends that a weakening of the social order coalition is more likely when a president pursues an alternative path to militarization. As the inheritor of the militarization policy rather than its initiator, the Peña Nieto administration had the opportunity to reconsider militarization as the pillar of Mexican military policy. Facing moderate but sustained international pressure, the administration attempted a change of direction and made some concessions to the oversight coalition, but its commitment and capacity to reform ultimately proved weak. Deepening political and security troubles followed, and by 2017, the social order coalition had regained strength. Nonetheless, on the ever-nettlesome question of judicial accountability, significant disruption of the high-autonomy status quo signified ongoing disequilibrium in civil-military affairs.

### *Rethinking the Military-First Solution: “Coordination” and the Gendarmerie*

Peña Nieto’s team arrived in office in December 2012 determined to change the narrative of a Mexico “at war.” The administration sought to downplay security concerns and refocus international media attention on a set of ambitious, multi-party social and economic reforms known as the Pact for Mexico. It also sought to put its stamp on security policy, and Peña Nieto’s public security team undertook a series of policy shifts to differentiate it from the Calderón administration. The administration made a mantra of coordination, collapsing the Public Security Secretariat into the interior ministry, centralizing cooperation with U.S. agencies in a “single window” (*ventanilla única*) agency within the interior ministry, and opting to create a gendarmerie (*gendarmería*) to serve as a police-military hybrid (Ribando Seelke et al. 2017, 4; Meyer 2014). In speeches and public appearances, the president habitually emphasized coordination, both between federal agencies and across levels of government (Presidencia 2013). A draft (though not

final) version of the National Security Plan for 2014-2018 heavily featured the idea, labeling “weak institutions and scarce coordination” the primary cause of the rise in crime and violence during the Calderón administration (Secretaría de Gobernación 2014). “Encouraging the creation of points of interinstitutional coordination” was the first item listed among the national security lines of action in the 2013-2018 National Development Plan (Gobierno de la República 2013, 106). As many critics pointed out at the time, coordination was a method, not a strategy (Hope 2013), but violence declined each year from 2012-2014, prompting the administration to “believe its own propaganda” (Hope 2017).

At the same time, the administration largely maintained the military’s role as the main protagonist in public security. Unsurprisingly for the party that presided over decades of the civil-military “pact,” the administration’s appetite for reform did not extend to democratizing core elements of the civil-military architecture. In terms of structural reform, the administration seemed to inherit the traditional attitude shared by the PRI and the military brass alike: that the lack of coups, massacres, and other misdeeds that prompted severe backlash in other Latin American countries meant that Mexico’s anachronistic military institutional model “worked” for the country, and there was no need for change. As in the PAN administrations, management of the civil-military relationship centered on the office of the presidency; even on legislative issues, the legal departments in Army and the Navy communicated with its peer office in the presidency, which then brought comments back to Congress (interviews with Mexico analyst 3 and Mexico analyst 4, 2014). The complete lack of civilian oversight of operations continued, with one notable exception: Naval tactical units engaged in operations against high-value targets such as the raid that resulted in the 2014 arrest of Joaquín “El Chapo” Guzmán, which was directly overseen by

the office of the presidency, with units flown straight from Mexico City to Mazatlán, over 1000 km away (interview with Mexico analyst 1, 2014).

### *International Pressure, Recalibration, and Military Justice Reform*

The recalibration opportunity provided by the Peña Nieto administration's status as a policy inheritor was most apparent on the issue of judicial accountability. Not only did the administration inherit militarization and high violence, it also inherited persistent pressure from the U.S., the UN, the Inter-American system, human rights groups, and even the International Criminal Court, to which rights advocates were appealing for a preliminary investigation. The depth of contradictions between Inter-American and domestic legal standards had been laid bare; following the Supreme Court's 2011 *Radilla* decision declaring Article 57 of the military justice code unconstitutional, the military was in state of severe legal uncertainty. The administration decided that the PRI should abandon its earlier opposition to limited military justice reform, and the project gradually made its way through the legislature, eventually achieving final passage in April 2014. Key human rights groups such as the Miguel Agustín Pro Center for Human Rights (Centro Prodh) expressed qualified approval of the bill, viewing it as a useful shake-up to the status quo of total impunity—despite significant concessions granted to the military (interview with Brewer, 2015; see Chapter 6 for more detail). The 2014 military jurisdiction reform would eventually prove to be the high point of *de jure* military accountability reform. In terms of the balance of power, the bill demonstrated that the military lacked veto power in the face of sustained shaming pressure, but opposition by the generals had successfully delayed the reform for four years and extracted important concessions.



### *Human Rights Scandals, Curtailed Reform, and the Stagnation of Incipient Reform*

The jurisdictional shift was accompanied by the expansion of human rights training and the publishing of rules of engagement in 2011. These reforms appeared, however, to have at best, a mixed effect on military behavior. Complaints to the CNDH regarding the Army did decline starting in 2012, but the Army's lethality index<sup>16</sup> continued to rise through 2012 and in 2014 (the last year information was available) remained almost four times as high as 2009 (Silva Forné et al 2015). In June 2014, the most notorious incident yet occurred in the municipality of Tlatlaya, in the State of Mexico, where a nighttime confrontation with criminals resulted in a toll of 22 dead civilians, with just one injured soldier. Initially portrayed by the military as a legitimate application of military force, reporting by foreign journalists uncovered witness testimony that at least some of the dead were executed following surrender (Ferri Tórtola 2014). The CNDH subsequently confirmed at least 12 had been the victims of extrajudicial executions (CNDH 2014).

As argued in Chapter 2, the pursuit of policy alternatives can open space for democratic oversight if these alternatives reduce dependence on the military or produce a split between the president and the social order coalition. In 2014, several events combined to put the Peña Nieto administration in a defensive position it would be unable to emerge from during the rest of its term, which reduced the probability of a presidential-military split. The most dramatic incident, in September 2014, became Mexico's most emblematic human rights scandal of the 21<sup>st</sup> century. A group of 43 students from a rural teaching college in Guerrero were forcibly disappeared after being seized by local police in the city of Iguala and handed over to organized crime members. Although the military was not initially accused of direct involvement, military officers consistently refused to offer full cooperation with both CNDH investigators and an international mission from

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<sup>16</sup> A measure constructed via a) the ratio of dead/wounded civilians per dead civilian and b) the ratio dead civilians to wounded ones; the higher each ratio, the more suggestive of potential extrajudicial executions.

the IACHR. The military also solicited vocal support from political allies, with Peña Nieto exculpating the Army from responsibility (Cervantes 2015). Notably, representatives of the business community demonstrated the continued cohesion of the social order coalition by vocally following suit. As the military faced increasing pressure to cooperate in early 2015, the Army and Navy signed cooperation agreements with a major business umbrella group, the Business Council Coordinator (CCE). At the signing ceremony, business representatives echoed the military calls for an updated legal framework and explicitly rejected allowing investigators onto military bases, with one representative stating “there is no indication” of military involvement (SDP Noticias 2015; Ponce 2015).

Human rights observers found the military’s lack of cooperation in the Iguala investigation troubling. In addition, Tlatlaya and similar events with lower death tolls called into question the efficacy of both the military’s human rights training and rules of engagement issued in several iterations between 2009 and 2014. Interviewees shared the skepticism, suggesting that training and protocol notwithstanding, “those in the field, act” (*los en servicio, actúan*—interview with Mexico analyst 4, 2015). A group of Spanish and Mexican journalists collected rare testimony from low-ranking soldiers who described extremely deficient training and characterized obedience to superior orders, even illegal ones, as inviolable. According to the soldiers, their choice at times was one of following illegal orders and facing possible rights abuse investigations, or ignoring them and facing certain investigation for insubordination (Rea et al. 2016). Meanwhile, the Army’s noncooperation with the IACHR prompted questions about whether the president or Secretary of Defense Salvador Cienfuegos, rather than Peña Nieto, was the primary decision maker on the limits of military transparency.

Making matters worse for the government, violence in general began to rise in 2015, and by 2017 had cancelled out all progress made after the previous peak in 2011.<sup>17</sup> The government demonstrated no credible response; worse yet, reform initiatives to improve civilian policing had proceeded only haltingly, so little relief from improved law enforcement appeared to be forthcoming. The size of the Federal Police, which had tripled to nearly 37,000 agents under Calderón, stagnated, adding fewer than 1000 agents by 2016 (Hope 2017). Several attempts to pass a national law placing all municipal police under the command of state police forces (*mando único*) failed, although the project was partially salvaged by pursuing the program on a state-by-state basis.

By 2015, moreover, it was clear that the gendarmerie was yet another example of truncated civilian security policy. A debate between the Federal Police and the armed forces regarding the institutional position and personnel source for the new force produced a mixed outcome: nearly all of the 5,000 gendarmerie forces came from the military, but strong lobbying by Cienfuegos to place the force within the Army failed (Rodríguez 2018). However, after losing the battle over the institutional home of the gendarmerie and the resources that would accompany it, the Army began to expand the size and training of the Military Police (PM), which had previously occupied a low-profile role that rarely involved engagement with the public (Aranda 2016). By mid-2017 over 4,000 PM members had been deployed in association with the anti-crime role (Wong 2017), and the Army was allegedly planning a force of 50,000—precisely the initially anticipated size of the gendarmerie, which had meanwhile stagnated at 5,000 officers and lost all momentum (Rodríguez 2017). The Army’s ability to pursue its own program while the civilian version floundered

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<sup>17</sup> The cause remains unclear, but some analysts attribute it to the combination of a clash between an insurgent and an incumbent cartel, the expansion of new criminal markets (especially gasoline siphoned from pipelines), and party alternation in state governments (see Guerrero 2018).

demonstrated that, at least while militarization continued, officers would act to ensure a privileged position.

### *Regime Retrenchment and Rising Military Power*

Amid the polemics over Tlatlaya, Iguala, and other allegations of abuse, Secretary of the Army Cienfuegos granted an unprecedented series of interviews to the media in 2015 and 2016. A common thread in these interviews was the military's "reluctant warrior" view of the internal security role. He labeled the military's policing role a mistake and expressed a desire for the troops to return to their bases (Guevara 2016)—as well as explicitly stating that the military justice reform was a mistake (Benavides 2015). However, according to numerous analysts interviewed, this professed demurral regarding the public security role was at least partly disingenuous. On the contrary, the rise in institutional power and resources was a powerful draw—officers had become accustomed to "*poder, plata, y prestigio*" (power, money, and prestige), as one retired general stated (interview, 2016).

Regardless of true intentions, the military's pleas were echoed in ways that reinforced the cohesion of the social order coalition. Alejandro Martí, a wealthy businessman who became one of the country's most prominent anticrime activists following the kidnapping and murder of his son in 2008, penned an August 2015 op-ed exalting the military's role and directly quoting Cienfuegos. In the piece, he repeated the military's claim that progress was occurring in spite of "hypercritical groups watching their behavior with a magnifying glass, not always in good faith" and called explicitly for legislative regularization of the internal security role (Martí 2015). Similarly, in May 2015 a group led by Miranda de Wallace, a wealthy parent of a crime victim, held a "silent march for peace" in which protesters carried signs supporting the military on a route ending at the central military installation in Mexico City (Vicenteño 2015). The march had been

criticized by human rights groups opposed to militarization, indicating that not all victims groups were necessarily associated with the oversight coalition (Robles 2015).

As the Peña Nieto administration's political standing deteriorated and its dependence on the military increased, the preferences of the generals began to receive greater deference. The military scored a partial victory—little noted by the Mexican or international media—in May 2016, when additional changes were made to the Code of Military Justice that, if interpreted broadly (and if upheld as constitutional in a challenge pending at the Supreme Court as of early 2018), could grant the military justice system increased power over civilians (Suárez-Enríquez 2017, 26).

Far more significant was the development of the debate over a statutory law to regularize and clarify the military's role in public security. The existence of contradictory, confusing constitutional provisions regarding security institutions and executive authority made the military's interest in clarification understandable. Demands for what Cienfuegos described as a law to “give society certainty about what we do, how we do it, and when we should do it” (Secretaría de Defensa 2016) increased in frequency, if not clarity, about what “certainty” meant. The legislative debate included several versions of the law, and mainly featured the PRD in opposition, the PRI in support, and PAN legislators in the middle. NGOs mobilized against the bill and were able to block its passage during the 2016 legislative sessions, demonstrating a seeming stalemate: while the oversight coalition struggled to force the provision of genuine accountability, members could at least complicate perceived backsliding on civil-military issues.

During 2017, the bill's prospects seemed to rise and fall, but as the end of the Congressional session approached, the government mounted a strong push, again with strong backing from social order coalition-aligned business groups and civil society organizations. The oversight coalition,

for its part, mounted an unprecedented mobilization effort to block the bill, with a raft of domestic groups joining forces adopting the label #SeguridadSinGuerra (Security without War). Mexican rights groups were joined by transnational NGOs, academics, supranational rights observers representing the IACHR and UN—including a statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein, who labeled the bill “disturbingly ambiguous” (UNHCHR 2017)—and even the government-sanctioned CNDH. Oversight coalition members used strikingly ominous language to describe the law’s potential consequences, with one academic saying it “effectively displaces the Constitution” (Malkin 2017) and a prominent columnist calling it “the equivalent of a military coup” (Dresser 2017).

The efforts were to no avail: a strong governmental push led to passage of the law in December 2017, with PRI legislators joined by the Calderón-led faction of the recently-split PAN. Although many of the law’s provisions appeared superficially anodyne, the regularization of the military’s role was viewed by oversight coalition members as both consent to indefinite militarization and the prelude to even more opaque management of state violence (Pérez Correa 2018). Oversight coalition members also impugned the law’s constitutionality, arguing that it used an archaic constitutional passage referring to “internal security” in order to justify the seeming subordination of far more recently added articles specifying the civilian nature of “public security” and requiring the president to seek approval from state legislatures in each entity in which troops were deployed (Madrazo and Romero 2018).

On the other hand, the most commonly dispensed phrase by defenders of the initiative—the need for “judicial certainty”—seemed to imply a desire for deliverance from accountability threats, a deliverance that would require noncompliance with Mexican laws and international treaty obligations (see Chapter 6), as well as noncompliance with the 2014 military justice reform.

The Internal Security Law therefore portended a deepened struggle over democratic oversight in Mexico's dysfunctional political context.

*Mexico's Democratic Oversight Status: 2017*

The seeming trend toward diminished democratic oversight toward the end of the Peña Nieto administration did include hints of potential sources of future civil-military dynamism. With respect to civilian engagement, Congress acted as a focal point during the debate over the Internal Security Law, both as a target of lobbying by civil society groups and a venue for opposition members of Congress to articulate the sources of their opposition. A report produced by a Senate-affiliated research institute offered a critical portrayal of the effects of militarization and conceptual underpinnings of the law (Galindo et al. 2017). The long delay in passing the law signaled a level of non-automatic deference to a joint military-executive priority that contrasted with the rapidly passed 2016 changes to the military justice code.<sup>18</sup> Congress's behavior might be attributed to interest in marking distance from an unpopular president as the 2018 general elections approached, but Peña Nieto's approval ratings had already dropped into the 20s in May 2016, when pro-military changes to the military justice code easily cleared Congress. The unprecedented level of oversight coalition mobilization therefore appears to have contributed to the difficulty encountered in assembling a majority coalition for the bill.

Similarly, interviews in 2015 and 2016 indicated interest in developing security expertise—"breaking the pact from the civilian [non-governmental] side," as one analyst labeled it (interview with Mexico analyst 1, 2014). In general, the military's ability to maintain hermetic insularity from society and international currents has receded into history. Nonetheless, democratic

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<sup>18</sup> The actual content of the LSI, however, did not establish a central role for Congress in managing the military's internal role.

oversight in Mexico remains low. The military's traditional aloofness vis-à-vis civilians continued, notwithstanding occasional contact with a small coterie of civilian security experts in classes at the Superior Naval Academy (interviews with Mexico analysts 1 and 3, 2014). As Chapter 6 will make clear, all the resources invested in the pursuit of accountability have achieved relatively little actual punishment, as well as few signs of deterrence. Military noninterference in politics clearly regressed during the Peña Nieto administration, with the military more visibly staking out policy positions and using the media and civil society to lobby the president and Congress than at any moment in recent Mexican history.

TABLE 5.5: DEMOCRATIC OVERSIGHT STATUS: MEXICO 2017

<b>Dimension</b>	<b>Year</b>	<b>2000</b>	<b>2006</b>	<b>2012</b>	<b>2017</b>
<b>Civilian Engagement</b>		1	1	2	2
<b>Legal Accountability</b>		1	1	1	2
<b>Military Noninterference</b>		4	3	4	2

(All dimensions scored 1-5: 1=abysmal; 2=deficient; 3=moderate; 4=sufficient; 5=exemplary)

## Conclusion

This chapter has offered an overview of militarization's effect on democratic oversight in Mexico. Structural and historical conditions made the country infertile terrain for significant advances in democratic oversight. Military discredit played no role in the democratic transition, and the country's anachronistically-structured military institutions were seen as a strength rather than a weakness. A severe deficit of expertise in the civilian defense realm meant there was little opportunity to mobilize in favor of alternative military institutional arrangements at the time of



transition. The military had a long record of involvement in internal security— and had enjoyed nearly complete impunity for human rights abuses.

Calderón's militarization policy altered the picture. The rights abuses that inevitably accompany militarization brought more contention to the realm of Mexican civil-military relations than ever before. Deployment of troops into a context of predictable high risk, for both soldiers and civilians, produced a drumbeat of rights abuses, while oversight coalition mobilization ensured that a spotlight would be cast on them. Pressure slowly mounted to disrupt the military's high-autonomy equilibrium. When a policy inheritor took office, the downsides of militarization were sufficient to prompt a recalibration of security policy. The military justice reform of 2014, even if intended mainly as a tactical concession, served as a genuine signal that military autonomy could be disrupted.

As the chapter has shown, however, disruption does not necessarily generate effective oversight. International pressure faced limits in a large, important, nationalistic country; combined with the lack of a credible alternative to militarization, the oversight coalition's achievements were limited. When the policy inheritor's tepid attempt at forging an alternative to militarization failed, the military was empowered to assert its prerogatives, as evidenced by the lobbying for the internal security law. No side was left happy, however: civilians resented the security policy failures that generated dependence on the military; the military resented stains on the institutional image being generated by rights advocates; rights advocates perceived a largely unreconstructed, empowered military. The road to increased democratic oversight appeared to be a long one.

## CHAPTER 6

### MILITARY ACCOUNTABILITY IN MEXICO: RESISTANCE, REFORM, AND RETREAT

#### Introduction

The Mexican military's deepened involvement with anticrime efforts starting in 2006 pushed the issue of judicial accountability to the fore of civil-military relations. Overall, the Mexican military has been able to remain insulated from prosecutions for rights abuses. Yet important nuance exists: during the militarization era, the military's historically untouchable legal protection was weakened to an unprecedented extent, and cracks appeared in the wall of impunity. How did the advocates of increased influence contest the alliance between the Calderón administration and the military? How far did changes go—and why did they subsequently stagnate?

This chapter explains how the dynamics of militarization were directly tied to these changes—as well as why weakened legal protection did not translate into widespread prosecutions. To summarize, by increasing the degree of contact between Mexican citizens and a military trained to vanquish state enemies, the militarization policy initiated by Felipe Calderón in 2006 created ripe conditions for human rights violations. These abuses triggered a backlash among rights advocates in Mexico and abroad, who worked with allies in foreign governments and supranational organizations to put accountability pressure on the Calderón administration. As the theory described in Chapter 2 suggests, such pressure is unlikely to produce significant change in military accountability during the administration that initiates militarization. The subsequent administration, however, can assess the reputational and material costs of impunity and recalibrate. In Mexico starting in 2012, the Enrique Peña Nieto administration sought to deemphasize militarization and defray reputational costs by pushing a reform limiting the scope of the military

justice system. Transnational attention to rights abuses remained high, and by early 2016, a handful of prosecutions in civilian courts had occurred. However, the Peña Nieto administration's failure to meaningfully develop an alternative policy to militarization meant that when public security began to deteriorate, the president's reliance on the armed forces deepened. By the end of 2017, civilians appeared to be ceding greater power and control to the military. Nonetheless, the degree to which the government would be able to provide a credible commitment to the "judicial certainty" craved by the military remained in doubt.

The chapter will begin by describing the lack of judicial accountability during the decades preceding militarization in 2006. The military benefited from both political and legal protection throughout this period, with civilian deference to an expansive military justice system providing the foundation for impunity. A human rights movement that arose in the 1980s was initially only marginally effective in focusing attention on the lack of accountability. The Zapatista rebellion in 1994 and the military's gradually increasing involvement in counterdrug efforts in the 1990s and early 2000s generated more attention to critiques by human rights advocates. However, the prominence of rights issues during the democratic transition did not translate into effective action under President Fox. At the dawn of militarization in 2006, prosecution for rights abuses in civilian courts was essentially unheard of.

The next section will track the increase in attention to alleged abuses as militarization deepened under the Calderón administration. Oversight coalition members mobilized and made limiting the scope of military justice a focal point of their efforts. The mobilization largely hinged on shaming, however, as material leverage over Mexico was limited. Although the Calderón administration's first reaction was defensive, as pressure persisted and became focused on military accountability the government undertook initial steps toward limiting the protections provided by

military justice to alleged rights abusers. Nonetheless, in the absence of any decrease in the strength of the social order coalition, reform attempts were left unresolved prior to the 2012 presidential election.

The next section turns to the first half of the Peña Nieto administration, when accountability efforts slowly gathered momentum. The return to power of the PRI—the party indelibly associated with Mexico’s tradition of military autonomy—seemed to present an unpromising scenario for reform. Yet the administration’s interest in differentiating itself from Calderón’s policy program prompted efforts to take superficial steps toward security sector and police reform as a substitute for militarization. Combined with sustained international pressure, the Peña Nieto administration decided to put executive and party weight behind legislation passed in April 2014 to limit the military justice system. During the next 18 months, some halting moves toward implementation occurred. However, as the final section of the chapter explains, the accountability opening slowed and eventually stagnated. Not only did police reform efforts stagnate, but violence spiraled upward, heightening the increasingly unpopular and unresponsive administration’s dependence on the military. I conclude the chapter by emphasizing that despite the limited effectiveness of the oversight coalition’s efforts with respect to prosecutions, the increased size and coherence of the accountability movement signified a genuine obstacle to the Mexican government’s ability to forge the high-autonomy civil-military equilibrium favored by the armed forces.

TABLE 6.1: TIMELINE OF MAJOR EVENTS: MEXICO

Year	Event	Significance
1994	Zapatista Rebellion	Military abuses draw global attention
1998	Accession to Inter-American Court	Mexico accedes to Inter-American Court of Human Rights, providing venue for contestation of military justice code
2001	Creation of FEMOSPP	President Fox appoints special prosecutor to investigate human rights abuses during 1970s and 1980s
2005	Operation Safe Mexico	Major military/police counterdrug operation signals deepening militarization
2008	Joint Operation Chihuahua begins	Initiation of large-scale military operation responsible for numerous accusations of rights abuses
2009	Inter-American Court <i>Radilla</i> decision	Inter-American Court of Human Rights rules that Mexico's military justice code violates American Convention on Human Rights
2010	U.S. Military Aid Withheld	U.S. temporarily withholds \$26 million in aid while calling attention to human rights abuses
2010	First reform of military justice proposed	Legislation submitted to reform military justice (unsuccessful)
2012	Peña Nieto elected	New President Enrique Peña Nieto elected on platform of deemphasizing militarization
2014	Passage of military justice reform	Legislation passed to limit scope of military jurisdiction
2014	Human rights scandals	Alleged Army massacre at Tlatlaya (June) and police-criminal massacre at Iguala (September) raise human rights pressure
2016	Rights abuse investigations falter	Weak progress in Tlatlaya and Iguala judicial processes cases raises tension between government and oversight coalition
2016	Military justice altered	Passage of military justice reform to expand military's investigative prerogatives
2017	Internal Security Law passes	Passage of legislation regularizing military's internal role signifies bolstering of social order coalition

TABLE 6.2: INDEPENDENT AND OUTCOME VARIABLES IN MEXICO<sup>19</sup>

	2006	2009	2012	2015	2017
<b>International Pressure</b>	Low	Med	Med	Med	Med
<b>S.O.C. Strength</b>	Med	High	High	Med	Med
<b>Outcome:</b>	<i>Enduring Autonomy</i>	<i>Enduring Autonomy</i>	<i>Enduring Autonomy</i>	<i>Contingent Reform ↑</i>	<i>Contingent Reform ↓</i>

## Historical Overview

### *Autonomy, Repression, and Insular Justice*

As described in Chapter 5, the 1940s transition away from presidents with military experience helped produce a pattern of civil-military relations often described as a “civil-military pact.” The keystone of the pact was an understanding that if the military stayed aloof from politics, political elites would leave the generals alone with respect to “internal” matters including budgets, operations, promotions—and justice. The military’s legal protection from prosecutions for abuse was not obvious from the language in Mexico’s 1917 Constitution: Article 13, which governs military jurisdiction, states that “military jurisdiction shall be recognized for the trial of crimes against and violation of military discipline.” This can potentially be read very narrowly, with military justice applied only to inherently military crimes such as insubordination. Alternatively, it can read quite broadly, to construe all criminal activity by soldiers as also violating military discipline. Amid this ambiguity, jurisdictional scope—and military insulation from prosecution—

<sup>19</sup> Note dynamism toward the end of the period (described in more detail below). The increase in judicial accountability seemed to peak in early 2016 but subsequently slowed; nonetheless, as of 2017 potential judicial accountability remained higher than in the period preceding the 2014 military justice reform.

was rooted in Article 57 of the Code of Military Justice of 1933, which stated that crimes against military discipline included those “that were committed by soldiers *in periods of service or in connection with service*” (emphasis added). This broad jurisdiction resulted in the nearly complete exclusion of military members from civilian courts—along with nearly complete impunity for the military’s frequent abuses of civilians during the early period of the PRI’s consolidation of power (Rath 2009, 193). Punishment, if dispensed at all, occurred within the military justice system, with decisions made on the basis of the military’s institutional needs rather than on any broad conception of justice of accountability.

Starting in the mid-1960s, increasing application of military force against political movements made the lack of accountability more visible. The overlapping efforts to combat rural insurgencies and urban insurrection were both brutal and largely effective. These were not purely military efforts; indeed, both quotidian and counterinsurgent forms of violence applied throughout the PRI’s long period of hegemony were carried out by a mix of police, judicial, military, and paramilitary authorities. However, efforts to combat rural, peasant-based guerrilla movements, centered particularly in Guerrero state between 1965 and 1974, heavily involved the military.<sup>20</sup> Operations were characterized by routine torture and disappearance, including techniques used more famously in Argentina and other regional peers, such as dumping the bodies of suspected guerrillas at sea (Sierra 2003, 66). Operations against urban guerrillas associated with the student movements of the 1960s and 1970s were similar in nature, though more frequently associated with paramilitary groups such as Los Halcones (which were themselves comprised of a mix of state actors from various security forces, along with hired thugs). Later investigations deemed the

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<sup>20</sup> These insurgent groups, most famously the Party of the Poor and the National Revolutionary Civic Association, were hardly toothless. Multiple ambushes and direct attacks on military and police facilities in the late 1960s inflicted scores of casualties (see Sierra 2003, 50-60).

military responsible for over 500 abuses during this period, with no record whatsoever of accountability.<sup>21</sup>

### *The Stirrings of Mexico's Human Rights Movement*

As in Colombia, Mexico's human rights movement began as a response to state abuses in the 1970s, and grew during the 1980s. In 1977 the Eureka Committee, led by Rosario Ibarra, the mother of a student who was forcibly disappeared, became Mexico's first human rights NGO (Aguayo 1994, 474). Growth accelerated in the 1980s. In 1984 the Mexican Academy of Human Rights (AMDH) was formed with substantial training assistance from Amnesty International. However, several features prevented the Mexican rights movement from achieving the coordination, articulation, and professionalization of its Colombian counterparts. First, the scale of abuses in Mexico was low compared to Colombia's carnage—roughly 750 dead and disappeared during the 1960s and 1970s (McKinley 2006), compared to Colombia's thousands—and moreover, there was a lull in military abuses following the decimation of the guerrilla movements. Second, the PRI had been strategic in constructing Mexico's international position, balancing a role as a refuge for victims of state repression in other Latin American countries with strict prioritization of sovereignty when it came to Mexico's own domestic affairs (Human Rights Watch 1990, 4). Third, attempts to amplify rights concerns via the most powerful influence on Mexico—the U.S.—were inhibited by Washington's sensitivity to Mexican sovereignty concerns and the perceived need to avoid rocking the diplomatic boat. This was especially the case in the context of the rise of drug trafficking and migration during the 1980s and 1990s. Finally, the most

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<sup>21</sup> A few officials implicated in abuses were eventually prosecuted, but only after allegations of involvement with drug traffickers made them politically toxic. See the example of José Antonio Zorrilla in Sierra 2003, 106.



significant spurs to NGO activity in the period—the 1985 Mexico City earthquake and the gradual breaching of the PRI’s electoral monopoly—prompted a focus on democratization efforts, even among human rights groups like the AMDH (Keck and Sikkink, 122).

Prominent transnational rights groups did attempt to draw attention to Mexico’s ongoing rights deficits. A major Human Rights Watch (1990) report titled *Human Rights in Mexico: A Policy of Impunity* is credited, in concert with attention drawn to Mexico by NAFTA negotiations, with prompting the government to create the National Human Rights Commission (CNDH) in 1990 (Ibid., 114-115). Overall, however, rights groups’ international mobilization was limited, so efforts to focus on security force accountability by fomenting international pressure lagged in comparison to Colombia. In combination with the fact that the PRI regime was essentially the pure distillation of a coherent social order coalition, the military retained comprehensive legal autonomy.

### *The 1990s: Chiapas and Global Attention to Abuse and Impunity*

There was no major change in this pattern in the 1990s, but as with Colombia in the 1980s, several developments helped bring greater scrutiny to the military’s rights record, thereby laying the initial groundwork for subsequent pressure. The major test of the state’s ability to balance responsiveness to international criticism with allegiance to the military occurred in connection with the Zapatista rebellion of 1994. While from a military perspective the threat was effectively contained, the state was subjected to immediate, vocal censure from transnational activists inspired by the Zapatistas and their clever messaging. Accusations of rights violations led President Carlos Salinas to halt active military operations without wiping out the guerrillas—a rare example of a civilian veto of military operational control (Ronfeldt et al. 1998, 62-63); a second offensive was

stopped in February 1995 (under President Ernesto Zedillo) after another wave of outcry (Schulz 1998, 600).

The Chiapas uprising settled into an indefinite standoff. Compared to the counterinsurgency campaigns of the 1960s and 1970s, alleged military violations were limited—but the international attention made them far more visible. In accordance with tradition, investigations of military rights violations were conducted within the military justice system. In multiple cases in which evidence suggested extrajudicial executions and other grave crimes had occurred in Chiapas, the military refused to address evidence provided by rights advocates (Human Rights Watch 1996). The same was true of a less conspicuous but more brutal campaign against a new insurgent group, the People's Revolutionary Army (EPR)<sup>22</sup> that emerged in Guerrero in 1996. According to rights groups, anti-guerrilla efforts featured the security forces' standard repertoire of torture and disappearance. The EPR was both more ideologically rigid and less media savvy than the Zapatistas, and did not benefit from the latter's international network of sympathizers. Rights advocates, however, took note of alleged military abuses and incorporated them into their increasingly frequent critiques of the expansive scope of the military justice system as a factor reinforcing impunity (see, e.g., Amnesty International 1998, 1; Human Rights Watch 2001, 3).

The other feature of human rights attention to military justice came from a different angle: denunciation of the military justice system's abusiveness toward *soldiers*. In 1993 Brigadier General José Francisco Gallardo was arrested after penning a magazine article arguing that arbitrary treatment of soldiers within the military justice system necessitated the creation of a military justice ombudsman. Gallardo was charged and acquitted of libel charges in civilian court, but convicted of illicit enrichment and embezzlement in the military justice system. He became

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<sup>22</sup> A splinter group, the Revolutionary Army of the People's Insurgency (ERP-I), also carried out several attacks and was harshly repressed.

one of the most prominent political prisoners in Mexico, with Amnesty International declaring him a prisoner of conscience, the IACHR recommending his immediate release, and the UN Working Group on Arbitrary and Illegal Detentions calling on the state to remedy Gallardo's arbitrary treatment (Amnesty International 2001, 5-7).

By the late 1990s, the outlines of an oversight coalition had formed. Domestic and transnational groups formed the core, but the gradual opening of Mexico's political system also resulted in newly empowered actors within the state. The CNDH was immediately a useful (though imperfect) hinge between civil society and the state. Following the landmark 1997 election in which the PRI lost its congressional majority, members of Congress from the PAN and especially the PRD were often allied with rights groups as well. The list of oversight coalition actions taken to pressure Mexico in the late 1990s—reports by transnational groups, presentation of grievances in IACHR hearings, visits and reports from UN Special Rapporteurs (Anaya Muñoz 2012, 55)—is highly analogous to the pressures that would be mustered as militarization deepened decade later. However, activist success in drawing attention to rights abuses during this era was emphatically not matched by success in contending with near-universal impunity. Although Mexico initiated a partial opening to international human rights scrutiny during the Zedillo administration, the political system's response to pressure was largely comprised of window-dressing reform. And the military, meanwhile, remained largely immune from concrete repercussions.

### *The Fox Administration and Frustrated Accountability*

As described in Chapter 5, the Fox administration exhibited far more continuity than change along all key dimensions of civil-military relations. Indeed, the dynamic was a less intense

preview of the pattern under Calderón. As the military's anti-drug mission gradually expanded, dependence on the military contributed to Fox's lack of commitment to democratic oversight. A closer look at judicial accountability demonstrates the administration's ambivalence.

Early signals under Fox were promising for the oversight coalition. The administration immediately agreed to encourage cooperation with UN rights advocates and general openness to international rights observers (Acosta 2010, 620). With respect to personnel, the presence of Adolfo Aguilar Zinser as national security advisor and Jorge Castañeda as foreign minister signified a role for political actors closely linked to the NGO sector. The human rights movement also made direct entry into the state, especially via the appointment of Mariclaire Acosta, a co-founder of the AMDH, to head a newly created Subsecretary of Human Rights and Democracy within the Ministry of Foreign Relations. Finally, the CNDH's production of a report (which was not publicly released for several years) on the dirty war was followed by the creation of the Special Prosecutor for Social and Political Movements of the Past (FEMOSPP) in November 2001. These actions represented Fox's fulfillment of a campaign promise to the many rights advocates who campaigned vigorously on his behalf.

Although more intensive cultivation of these reformist impulses might have resulted in a weakening of the social order coalition, Fox's dedication to greater democratic oversight proved thin once the military's resistance became clear. Attorney General Macedo de la Concha's loyalty to the military was evident, as demonstrated by the PGR's rejection of international calls for the release of General Gallardo (Amnesty International 2001, 14). Fox's decision to commute Gallardo's sentence in February 2002, combined with the creation of FEMOSPP, seemed to exhaust the political capital Fox was willing to dedicate to challenging the military on legal accountability. The military justice system continually asserted jurisdiction over former officers

implicated by the FEMOSPP, and the administration made little effort to intervene or bolster the prosecutor's power (see Human Rights Watch 2006, 70-71 and 102-105). By the time the FEMOSPP closed in 2007, it had investigated over 1,000 cases, but had registered only 8 indictments—and had not achieved a single conviction (International Center for Transitional Justice 2008, 3).

International pressure on rights issues was substantial, but it was dispersed across a broad set of issues. For much of Fox's term, the most intense attention was trained on an epidemic of murders of women in Ciudad Juárez during the 1990s and early 2000s (see Anaya Muñoz 2012, Chapter 3). Toward the end of the administration, focus shifted to violent protests in Oaxaca (Ibid., Chapter 4). Meanwhile, the Bush administration initially sought to prioritize an enhanced partnership with the Fox administration, but the September 11 attacks redirected the U.S.'s focus; Mexico's hesitation to support the Iraq War caused a further diminution of the Bush-Fox partnership. By the second half of Fox's term, U.S. diplomats were increasingly emphasizing security deterioration along the border during interactions with Mexican officials (McKinley 2005); in the context of militarization, this reinforced the Fox administration's increasing deference to the military, and contributes to the characterization of international pressure as low in Table 6.2 (see above).

For all the controversy caused by the dirty war revelations, the second half of Fox's term was characterized by a diminution of pressure on the military. While the FEMOSPP unearthed a trove of information about military abuses during the anti-subversion campaign, the Army sharply limited its cooperation, denying access to files and rebuffing investigators' requests for assistance decoding the institutional jargon that permeated available files (Human Rights Watch 2006, 88). The nail in the coffin of Fox's accountability efforts was a sharp rise in drug-related violence in

2005 and early 2006, concentrated in Nuevo Laredo and other border cities. In response, Fox initiated Operation Safe Mexico, which included the dispatch of thousands of soldiers and federal police to several states (Freeman 2006, 5-8). This operation presaged the further intensification of the military's role in the Calderón administration—and placed the president ever closer to the military, and ever further from the oversight coalition.

### **The Calderon Administration: Militarization and Pressure**

#### *Increased Deployments, Increased Abuses*

During the Calderón administration (December 2006–December 2012), the military's presence throughout the national territory increased both quantitatively and qualitatively. For the government, it was deemed a matter of necessity: organized criminals were wreaking havoc in the streets and corroding institutions. Compared to the perceived imperative of maintaining state integrity, warnings by rights advocates that militarization would accelerate human rights abuses were brushed off. The result: an ever-higher human cost imposed by military action, a tight alliance between the military and the president, and almost no accountability for the military's excesses.

According to the framework presented in Chapter 2, the trigger for increased civil-military contention during militarization is an inevitable rise in human rights abuses as interactions between citizens and the military intensify. The 2007-08 wave of militarization described in Chapter 5 provided this context: compared with the use of the military in previous eras, there were more urban operations, more checkpoints, more aggressive patrols in populated zones, and even takeovers of the police in several municipalities. Compared to Colombia's Uribe, President

Calderón was not nearly as explicit in body count-style demands for results from the troops.<sup>23</sup> Rather, the subsequent rise in rights abuses seemed to stem from the sheer volume of contact between citizens and troops trained to vanquish enemies. Some alleged abuses, such as excessive force at checkpoints, occurred at the point of contact and implicate insufficient training, inadequate rules of engagement, or both. Others occurred following detention, especially torture and disappearance; incidents of torture were at least partly related to the fact that soldiers are not supposed to conduct investigations, and therefore are not trained in it. Deeply rooted impunity, of course, lowered the expected cost of abuse.

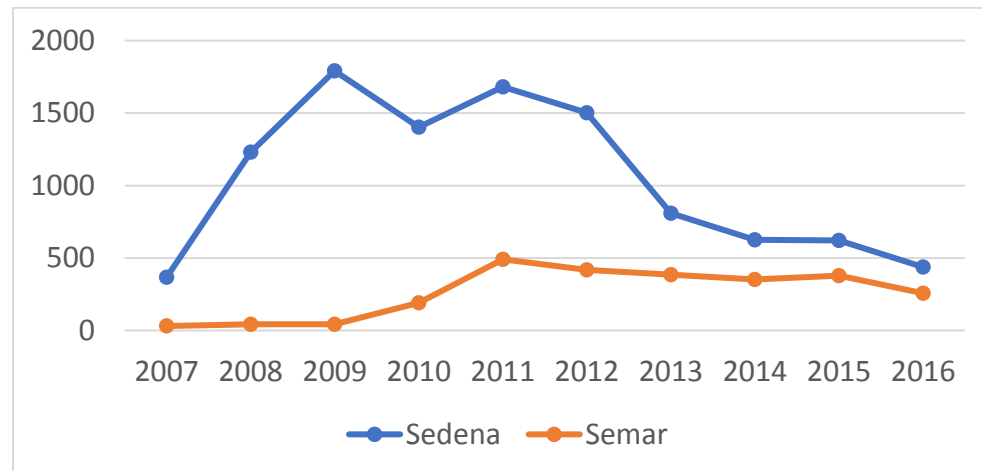
Reports of rights violations became increasingly common in 2007 and 2008. Several prominent early accusations of excessive force involved deaths at checkpoints and indiscriminate retaliation following attacks on troops (Brewer 2008, 8). Operation Chihuahua, initiated in March 2008 and intended to pacify Ciudad Juárez along with other high-violence regions in Chihuahua state, proved particularly problematic. By early 2009 over 11,000 soldiers and Federal Police had arrived, and the state government of Chihuahua registered scores of abuse complaints, including torture and executions; one of the units operating in the state would earn the nickname “the platoon of death.” Deployments in Monterrey brought further accusations, notably the torture and murder by Marines of José Humberto Márquez in March 2010 and the killing of two graduate students at Tec de Monterrey, one of Mexico’s most prestigious universities, that same month. These dramatic incidents were backed by more systematic evidence indicating that more military interaction with

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<sup>23</sup> There is some evidence linking demands for quantifiable results to rights abuses. Soldiers implicated in the “platoon of death” (see below) testified that commanders in Chihuahua frequently demanded increased arrests and drug confiscations.

citizens was generating increased abuses, in the form of a spike in complaints to the CNDH (see Figure 6.1).<sup>24</sup>

FIGURE 6.1: MEXICO—CNDH COMPLAINTS BY YEAR



Source: National Human Rights Commission (CNDH)

### *The Oversight Coalition Draws Attention to Military Impunity*

In keeping with the sequence described in Chapter 2, the rise in abuses generated a strong reaction from the oversight coalition. Although military accountability had competed for attention with a number of other rights issues during the Fox administration, domestic rights groups had continued to document complaints and work with international counterparts as well as within the Inter-American system. Mexico's oversight coalition always operated in a less coordinated, more fragmented manner than Colombia's (López and Hincapié 2017). However, the increased attention that attended the spiraling violence also facilitated new efforts to invigorate transnational

<sup>24</sup> CNDH complaints are far from exhaustive – aside from unreported complaints, many victims file reports with state human rights offices or with NGOs. Moreover, not all complaints involve significant human rights abuses. Nonetheless, they are generally considered an adequate indicator of trends in abuses.



cooperation networks and disseminate information to counteract the Calderón administration's portrayal of all victims of violence as somehow involved with the drug trade.

As the Calderón administration's militarization policy deepened, long-existing domestic organizations such as Tlachinollan, Centro Prodh, and the Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH) took the lead in calling attention to military abuses. These groups had already been active for years in providing direct assistance to victims of alleged military abuses at the domestic level and helping bring cases to the IACHR and Inter-American Court of Human Rights, while also helping coordinate visits by Amnesty International, Human Rights Watch, and other groups. All these efforts had yielded repeated legal scoldings of Mexico from the Inter-American Court and foreign governments, but little substantive progress (see Chapter 5).

In 2008, civil society organizations began a concerted push for military justice reform, making a strategic choice to challenge the state at a point of perceived potential vulnerability (interview with Aguirre, 2016). Military justice reform presented a critical difference from the diverse set of rights issues that garnered attention in the 1990s, as well as the broader demands to end social violence in the late 2000s: it established a concrete, feasible target for groups—a “winnable issue” (interview with Meyer, 2016). Similar to Colombia prior to the false positives scandal, the credibility of Mexico's system had long been in question, with observers perceiving the military justice system not only as a bastion of impunity for abuses committed by soldiers against civilians, but also as a tool of institutional persecution against soldiers themselves—as displayed most clearly in the General Gallardo case described above (Camp 2005). Indeed, Mexico's military justice system was an even more suitable target than Colombia's, given the manifest incompatibility of Military Justice Code Article 57 with international law. By mid-2008,

several cases involving military impunity were already in process at the Inter-American Court, setting the stage for increased international pressure.

### *The Inter-American Court Undercuts Calderón's Defense of the Military*

As described in Chapter 2, a sense of linked political fates compels presidents responsible for militarization to defend the military. The Calderón administration exemplifies this pattern. As of 2009, the administration was still fiercely defending the military justice system, even dispatching interior minister Fernando Gómez Mont to personally argue the *Radilla* case at the Inter-American Court (Gutiérrez 2009). The military and administration claimed that rights abuses were properly investigated, but in a major 2009 report dedicated to the deficiencies of the military justice system, Human Rights Watch stated that repeated requests for information yielded just one vague example of a conviction of military personnel in a military court, along with one in a civilian chamber (Human Rights Watch 2009a). Calderón's angry response to the report was typical of a militarizer: he demanded critics identify "any case, just one case, where the proper authority has not acted in a correct way, that the competent authorities have not punished anyone who has abused their authority, whether they be police officers or they be soldiers or anyone else" (Human Rights Watch 2009b). This interaction illustrates why Table 6.2 characterizes international pressure as having reached a medium level by 2009—but also why social order coalition strength is labeled high.

However, oversight coalition legal victories widened the gap between Mexico's military justice provisions and increasingly progressive Inter-American Court jurisprudence on the issue. The Court ruled against Mexico on four occasions in 2009 and 2010 alone, including in the case of Rosendo Radilla, a peasant forcibly disappeared by the Army in 1974. Although the Inter-

American Court's compliance power is limited (Hawkins and Jacoby 2010), these rulings made the gaps between Mexican and Inter-American law—which Mexico has been bound to since 1998—starkly visible.

International pressure for jurisdictional reform mounted as military operations continued. Reports from international NGOs in which military impunity was a major part of the focus included Human Rights Watch (2009, 2011, 2013); Amnesty International (2009, 2012); the Washington Office on Latin America (2010); and the Center for Justice and International Law (CEJIL) (2010, in collaboration with Mexican groups). Each of the aforementioned groups also issued numerous press releases, memorandums, and letters to the UN, the U.S. Congress, and Mexican state institutions. The UN Special Rapporteurs on the Independence of Judges and Lawyers (visit 2010, report 2011) and Extrajudicial, Summary or Arbitrary Executions (visit 2013, report 2014) also dispensed sharp critiques of military justice shortcomings.

Following the strategy used with Plan Colombia, rights groups succeeded in inserting language specifically conditioning 15 percent of some Merida Initiative funds on compliance with rights conditions—including military justice reform. In 2010 \$26 million was withheld, if only temporarily, on the basis of insufficient progress (Malkin and Archibold 2010). Almost all of these actions were the product in part of information provided by domestic groups such as Tlachinollan, Centro Prodh, and the CMDPDH, which were also active in providing direct assistance to victims of abuses at the domestic level and helping bring cases to the IACHR and Inter-American Court. In essence, the oversight coalition had matured and was succeeding in sustaining focused attention on the military's severe deficit of judicial accountability.

### *International Pressure Produces A Tactical Shift*

The onslaught of negative coverage of both the violence and the state response clearly affected the government's calculations. Whereas in 2009 the administration continued to sharply defend the military, by October 2010 it had entered a phase of concessions. However, when Calderón presented a military justice reform bill to Congress, it only proposed the removal of cases of rape, torture, and enforced disappearance from military jurisdiction. Human rights groups criticized this initial proposal as falling well short of international standards. Similar reaction greeted a revised April 2011 proposal that would have sent all cases involving civilians to civilian jurisdiction, but would have required special tribunals headed by active-duty or retired military officials, or judges with specialized knowledge of military discipline, to oversee all cases against security force agents (Human Rights Watch 2012c). The legislative project achieved closest consonance with the goals of the oversight coalition in April 2012, when a version with clear human rights language made it through the Senate Justice Committee (interview with Brewer, 2015).

However, the military made its displeasure with reform projects known. Retired generals associated with the PRI registered their objections, emphasizing in particular the argument that it was unfair and unwise to transfer soldiers from the supposedly more efficient military justice system to a civilian justice system rife with incompetence and corruption (interview with former cabinet secretary, 2014). Given this opposition, the PRI was disinclined to help the PAN deflect criticism, and the proposal stalled in committee, failing to make it to a full Senate vote prior to the change of administration in December 2012.

### *The Supreme Court Unblocks Reform*

Despite the ongoing contention regarding accountability, the Calderón administration did have a major human rights accomplishment to point to: in June 2011, Congress approved a constitutional reform that made far more explicit Mexico's obligations to incorporate treaty-based rights requirements into domestic law. This facilitated engagement with the crucial issue necessary to unblock military justice reform: clarity on the integration of international and domestic law. The Supreme Court's history of challenging the civil-military pact was thin (Ríos-Figueroa 2016). As recently as the 2009 *Reynalda Morales* case, the Court had passed on the opportunity to harmonize Inter-American jurisprudence and Mexican law, ruling that the family of a disappeared person lacked standing to challenge military jurisdiction (Tlachinollan 2013). However, in July 2011, the Supreme Court ruled that the Inter-American Court's standards as delineated in the *Radilla* case were now to be applied. The key change was the constitutional reform, which strengthened the jurisprudential case made by the court's pro-reform faction, particularly Justice José Ramón Cossío, who had been arguing that Article 57 was unconstitutional since the *Reynalda Morales* case. In addition, a line of jurisprudence pertaining to the purely internal application of military jurisdiction had been percolating under the radar, loosening the underpinnings of the military justice structure (interview with Caballero and Cruz, 2015).

Although the jurisprudence contained in the Supreme Court's *Radilla* ruling marked a key shift, the court punted on a formal ruling regarding the constitutionality of Article 57 of the Code of Military Justice. The final reckoning came following a series of decisions in August and September 2012, in which the Court declared the unconstitutionality of Article 57 and ruled that cases of enforced disappearance and extrajudicial execution must be tried in civilian courts (Tlachinollan 2013). The result of this jurisprudential trend was not instant accountability,

however. Rather, it was legal uncertainty, as there was no clear statutory language to guide jurisdictional decisions. Thus, the end of the Calderón administration in 2012 revealed a status typical of the middle phases described in Chapter 2: oversight coalition mobilization on judicial accountability had disrupted military autonomy, but a strong social order coalition prevented genuine accountability.

### **The Peña Nieto Administration: Reform and Retrenchment**

#### *A Complicated Inheritance and a New Approach to Accountability*

Presidents who arrive in office as policy inheritors have greater flexibility than militarizers to recalibrate the costs of militarization and pursue policy alternatives. When the Peña Nieto administration took office, it inherited not only a militarization policy but also strong pressure from the U.S., the UN, the Inter-American system, and even the International Criminal Court, to which rights advocates were appealing for a preliminary investigation of Mexico's rights practices. Activist pressure remained high as well: upon arriving in office in December 2012, the Peña Nieto administration was greeted by numerous letters and reports from the human rights community urging action on military impunity. Mexico's highly professional diplomatic corps echoed the refrain. Even as the faces of Mexican government changed dramatically at home, the administration maintained continuity among members of the foreign service charged with defending Mexico's rights record abroad. This signaled recognition of the importance of bureaucratic continuity in the face of sustained scrutiny from abroad, but the inverse was the consistent message being relayed back to Mexico City: that the lack of military justice reform was a foreign relations irritant (interview with Moreno, 2016).

Thus, by early 2013, the foundations of an expansive military justice system were teetering. Not only had the contradictions between Inter-American and domestic legal standards been laid bare, but the Supreme Court's declaration of Article 57's unconstitutionality had created a state of severe legal ambiguity. Therefore, a new legislative project began in July 2013, with a key PRI senator, Arely Gomez (who would be named head of the Prosecutor General's Office in 2015) stating that the project would harmonize the law with international standards and Supreme Court jurisprudence (Notimex 2013). Even members of the social order coalition like former prosecutor and newspaper columnist Federico Ponce, meanwhile, argued that reform might be worthwhile—but must not be because of pressure by the Inter-American Court and NGOs (*El Universal* 2013). Considering that the president's PRI party had been the legislative faction most skeptical of reform during the Calderón period, the new bill's prospects were strong. The presence of influential senators from each of the three main parties in the Senate Justice Committee—Roberto Gil of the PAN, Alejandro Encinas of the PRD, and Arely Gomez—also helped keep the bill on the congressional agenda (interview with Aguirre, 2016). Debates in Congress regarding the justification for and provisions in the bill were unusually plural for a civil-military issue. Indeed, the list of participants in the public hearings is essentially a microcosm of the social order coalition and the oversight coalition. Military representatives cautiously but firmly expressed concerns (Ramos Flores 2014; López Benítez 2014), but in April 2014 a bill formalizing the limits of crimes that can be tried within the military justice system passed unanimously in each chamber of Congress, entering into law in June. Notably, the Chamber of Deputies' Defense Commission legislative report specifically cited international pressure, including the IACtHR rulings and the role of Amnesty International and Human Rights Watch (Comisión de Defensa Nacional 2014).

Most human rights groups endorsed the bill as well, although not without some hesitation: in order to dampen military resistance, several concessions were incorporated, including the ability to conduct parallel processes related to the same incident in military and civilian courts, ambiguity regarding the role of military justice agents in forensic and investigative procedures, and the ability of convicted soldiers to serve sentences in military prisons (interview with Aguirre, 2016). Rights advocates acknowledged the reform to be a suboptimal bill, but generally considered it a useful shake-up to the status quo of total impunity (interview with Brewer, 2015).

### *Implementing Accountability: Faint Signals and Murky Data*

The unanimous passage of the 2014 jurisdictional reform seemed to indicate that the combination of sustained international pressure—even without significant material leverage—and a seeming decrease in civilian dependence on the military could produce improved judicial accountability. Even before the jurisdictional reform legislation passed, there were indications that the government felt a need to respond to the combination of international pressure and the Supreme Court's ruling that Article 57 was unconstitutional. In its submission to the UN Human Rights Council for the 2013 Universal Periodic Review, the government claimed to have transferred 231 preliminary investigations and 180 formal criminal cases involving abuses of civilians to the civilian justice system (Human Rights Council 2013, 10) following the Article 57 ruling. When Foreign Minister José Antonio Meade made his presentation on behalf of the state before the Council, he announced that 543 cases of rights violations had been transferred (Notimex 2013); while the specific numbers conflict and were difficult to verify, the escalating figures signified an effort to present a responsive face in the international arena.



Despite confusing data, some signs of compliance and accountability appeared to be emerging by late 2015 and early 2016; in combination with the passage of the 2014 military justice bill, I characterize judicial accountability as reaching the level of contingent reform as of 2015 (see Table 6.2 above). In some incidents in which military actions were apparently deemed beyond the pale, compliance was rapid; an example was the extrajudicial execution of seven people by an Army unit in Zacatecas in July 2015. Within weeks, the case had been transferred and indictments issued, including for the colonel in charge of the unit (Espinosa 2015).<sup>25</sup> Similarly, activists noted that cases of off-duty rapes of civilians seem to be directed without resistance to the civilian justice system (interview with Meyer, 2016). There were also middle-range cases, such as an incident related to a video that emerged in April 2016 of soldiers and Federal Police officials torturing a young woman in Guerrero. While seemingly a clear rights violation, the case had been initially processed within the military justice system; only after the huge outcry created by the video was the case remitted to the civilian courts (Muedano 2016). The implications of other cases were harder to judge. In what seemed to be an important precedent in April 2016, an Army general became the highest-ranking officer convicted and sentenced—to 52 years’ imprisonment—for murder and other crimes committed in 2008 in Chihuahua. However, there were significant doubts about both the initial military justice investigation and the evidence in the civilian court case (Veledíaz 2015). According to rights advocates, moreover, unless victims in a particular case receive support from an organization with legal expertise, information rarely filters into the public domain (interview with Aguirre, 2016).

Despite these faint signs, there was little clarity about the status of transfers to civilian courts because of contradictory data issued by the Army, Navy, and prosecutor general’s office.

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<sup>25</sup> Although activists later noted that the military seemed to be obstructing the investigation, in part by keeping the soldiers in military prison, as allowed under the 2014 military justice reform (Suárez-Enríquez 2017, 24).

Although many analysts have noted the military's somewhat surprising responsiveness to freedom of information requests, the institutions sometimes shirk on providing documents related to human rights case dispositions.<sup>26</sup> The Army and Navy each maintain documents on their websites describing compliance with cases in which the CNDH made recommendations, but once jurisdiction is ceded, compliance with the recommendation is considered fulfilled (Secretaría de Defensa Nacional 2016), and final case outcomes are difficult to determine. In April 2016, the chief of the military justice system stated that 229 cases of torture, 257 cases of homicide, and 72 cases of forced disappearance allegedly perpetrated by military members between 2006 and 2015 had been sent to the civilian attorney general's office (Alzaga 2016). A response to a WOLA information request in 2017 seemed to confirm a large volume of case transfers, but also revealed very limited prosecutions: of 505 investigations by civilian prosecutors of crimes involving alleged military abuses, there was evidence of only 16 convictions (Suárez-Enríquez 2017, 6).

### *Emblematic Military Abuse Cases and the Incapacity of Civilian Justice*

Converting “window dressing” or tactical concessions such as a narrowing of military justice into routinized prosecutions is more likely when prosecutors enjoy a supportive political environment. However, even when the national political context becomes more favorable to prosecutions, a dearth of independence or capacity can inhibit prosecutorial success. The emblematic case of the 2014 Tlatlaya massacre exemplified rights advocates' frustrations with the slow pace of change. After CNDH confirmation that at least 12 citizens had been the victims of extrajudicial executions, processes against seven soldiers began in civilian justice system. The case touches on several controversial points involving military accountability. First, the revelation of

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<sup>26</sup> See, e.g., transparency request case numbers 0000700169012 and 0000700217915.

an operational order to the military zone stating that soldiers should seek to “take out” (*abatir*) criminals in the area during nocturnal operations prompted rights groups to demand investigations reaching further up the chain of command (Centro Prodh 2015). Second, the emergence in February 2016 of information that six of seven soldiers tried in the military justice system for crimes against military discipline had been acquitted—with the seventh sentenced to just one year—generated outrage from rights groups (Centro Prodh 2016). In addition, the possibility that judicial reasoning and fact patterns derived from the military case would influence proceedings in civilian court illustrated rights groups’ fears that the parallel process provision of the legal reform could result in a bias toward impunity (Ibid.). Such fears were confirmed in May 2016, when the judge overseeing the civilian jurisdiction case against three soldiers dismissed the charges, citing evidentiary deficiencies (Ángel 2016). The outcome exemplified one fear of rights advocates: that a military policy of actively ceding jurisdiction might be effective in minimizing punishment.

In Mexico’s environment of politicized prosecutions (Schatz 2008), the inverse is also possible: pressure could be applied to convict soldiers in order to deflect domestic and international criticism. The soldiers and mid-ranking officers convicted in the Chihuahua “platoon of death” cases, for instance, argued that the entire case was fabricated in order to demonstrate commitment to legality (Veledíaz 2015). In a direct counter to the “rotten apples” refrain, these soldiers suggested in a petition to the IACHR that orders were explicit throughout the chain of command; indeed, one legal strategy involved efforts to compel the testimony of both Calderón and former Army Secretary Guillermo Galván (Ibid.). Notably, in both this case and other military prosecutions that received coverage, soldiers alleged that their testimony was coerced via torture—a claim made credible by the incidence and impunity described above.

### *Social Order Coalition Retrenchment and Military Pushback*

The framework elaborated in Chapter 2 posits that signs of a weakening social order coalition create political space for increased military judicial accountability. However, as Chapter 5 notes, by mid-2016 the Peña Nieto administration had entered a phase of retrenchment as violence spiked and the meagerness of police reform efforts became evident. In this context of renewed social order coalition cohesion, the signs of mild reform inclination faded and relations with the oversight coalition became increasingly hostile.

The military never hid its dissatisfaction with the new paradigm following passage of the 2014 military justice reform. Active-duty officers, though rarely willing to speak on the record, are blunt in their assessment that the reform was based on mistaken premises and had grave practical consequences (interview with Navy captain, 2016, Army colonel, 2016, and Army lieutenant colonel, 2016). For the soldiers, the efficiency of the military justice system stands in stark contrast to the chaos and corruption of civilian justice. Moreover—in a line of reasoning echoed throughout the hemisphere—civilian judges lack the sophisticated understanding of military operations necessary to evaluate the legitimacy and legality of operations that occur during the fog of war. Especially in the absence of a clear internal security law (prior to December 2017), military members claimed that the reform led to confusion and doubt in field operations.

As noted in Chapter 5, starting in 2015 Army chief Cienfuegos adopted an increasingly visible public profile, including expressions of regret at the passage of the military justice reform and calls for a comprehensive internal security law. He also staunchly defended the refusal to allow IACHR expert investigators to interview soldiers who were present at various moments on the night of the disappearance of the 43 students from Guerrero—Mexico’s most harrowing, highly-publicized human rights scandal of the century (Sin Embargo 2015a).

Starting in mid-2015, civilians in the executive branch opted to complement Cienfuegos's media offensive on military-specific issues with aggressive denigrations of domestic and international critics of rights practices. Among the prominent targets were UN Special Rapporteur on torture Juan Méndez, who was called "unethical" by a prominent Mexican diplomat (Sin Embargo 2015b) and IACHR head Emilio Álvarez Icaza, who was accused of mismanaging funds dedicated to the IACHR experts' role in the Guerrero investigation. More substantively, another military justice reform passed in June 2016 significantly expanded the military's investigative capacities (notably, the CNDH filed an action of unconstitutionality with the Supreme Court that remained pending as of mid-2018). Finally, the December 2017 passage of the Internal Security Law, despite highly vocal and coordinated oversight coalition opposition, indicated that as of the end of 2017, social order coalition cohesion was high. Although the 2014 military justice reform remained in effect, leading me to maintain the contingent reform designation in Table 6.2, the window of accountability that opened between 2014 and 2016 appeared to be closing.

## **Conclusion**

The arc of judicial accountability in Mexico exhibited far less drama than in Colombia. Oversight coalition efforts called to mind Max Weber's aphorism regarding politics as the "slow boring of hard boards." However, despite the comparatively low number of prosecutions, Mexico also demonstrates the validity of this dissertation's overall framework. In particular, the oversight coalition's strong focus on military justice reform illustrate the oversight coalition's strategic focus on concrete, "winnable" issues. Success in lobbying for explicit Merida Initiative language requiring that abusive soldiers be tried in civilian courts was matched by success in using the Inter-American rights system to cast a bright light on Mexico's military justice deficiencies. The rise in

international pressure yielded by a multi-pronged approach—litigation, shaming, and mild material leverage—focused on the single, discrete issue of jurisdictional reform was sufficient to achieve an important reform in a seemingly unpropitious reform setting.

It is worth recalling just how unlikely this change seemed. Given Mexico's history, institutional structures, and political conditions, neither the civil-military nor the human rights literature would predict reform. Indeed, as of 2012, even adherents of the relatively optimistic “spiral model” of human rights change were describing how structural factors, particularly the threat environment, were simply too powerful for activists to overcome (Anaya Muñoz 2012, 131). What unblocked the reform? Domestic and international court rulings helped, but as Chapter 2 contends, the key was the change of administrations and a recalibration of costs in the presence of a (mirage) policy alternative. Neither the history of PRI-military relations nor Peña Nieto's previously expressed issue positions suggested that greater legal accountability of the troops was an important policy preference. Passing the jurisdictional reform was a pragmatic response to the increasing international image costs—especially if the administration was not committed to implementation, as later events seemed to demonstrate. Nonetheless, the reform did impose some strain on the presidential-military relationship, as indicated by the subsequent grumbling by officers—hence the importance of the aborted shift toward police reform.

Had the policy alternative flourished, military unease about the new limitations on military justice would have posed a less sensitive conundrum. However, given the stark failure of the administration's public security policy and the narrowness of the policy alternative window prior to social order coalition retrenchment from 2016 on, it is little surprise that Mexico's accountability progress stagnated. Indeed, it is difficult to envision the country reaching the level of routinized accountability absent significant institutional and policy changes. However, it is also difficult to

see a full return to the pre-2014 status quo. The “judicial certainty” mantra of the military could only come through a jurisdictional counterreform—and Mexican policymakers have now seen that maintaining a blatant disconnect from international norms carries real costs.

## **CHAPTER 7:**

### **CONCLUSION**

#### **Theory and Case Overview**

The purpose of this study is to examine changes in civil-military relations that occur when countries decide to combat a public security threat through dramatic expansion of the military's internal security mission, i.e., militarization. The central research question is: under what conditions does militarization leads to greater civilian control? My primary finding—the paradox referenced in the study's title—is that it is possible to increase democratic oversight of the military, despite the material and political power that militarization confers on the armed forces. I place a particular focus on judicial accountability, and determine that the combination of sustained, focused international pressure on the issue and a weakening of the political coalition that supports the military are necessary for military impunity to be significantly impeded.

The fact that militarization can be compatible—and indeed plant the seeds for—increased democratic oversight is puzzling. Civilian politicians who initiate militarization are placing an important political bet on military performance, which should align the incentives of politicians and the generals and inhibit civilian willingness to encroach on traditional domains of autonomy. Even more puzzling is the phenomenon that prompted my decision to undertake this study in the first place: the wave of civilian court prosecutions of Colombian soldiers for human rights abuses—which occurred even as the military consolidated impressive battlefield gains. For armed forces around the world, judicial accountability is one of the most sensitive institutional prerogatives. Militaries invariably prefer to maintain maximal control over the investigation and punishment of soldiers accused of both disciplinary and criminal offenses. Colombia's surprising



accountability surge therefore demands explanation—as do the attenuated but revealing civil-military relations changes in Mexico.

My argument relies on a set of interconnected observations. The first is that militarization is disruptive to previous patterns of civil-military relations. The combination of an influx of resources, new performance demands, and intensified military interaction with civilian populations produces new scrutiny by state and nonstate actors alike. On one hand, this can potentially spur greater civilian engagement: in Colombia, for instance, executive branch bureaucrats sought more hands-on management and civil society actors developed military expertise in order to exert influence. On the other hand, if the armed forces commanders empowered by militarization begin to feel threatened, they may become more active and vocal within the political system, as witnessed in both Colombia and Mexico. The difficulties of achieving a civil-military equilibrium in such circumstances is the subject of chapters three and five.

The increase in attention to military behavior produces a second observation, and the theme of chapters four and six: judicial accountability as the most salient dimension of civil-military relations for actors seeking to contest the forms and repercussions of militarization. These actors—a group I term the *oversight coalition*, comprised of human rights advocates and their allies within domestic and foreign governments and supranational organizations—prioritize holding the military formally accountable for crimes committed against civilians. There are two reasons for this focus: first—and of absolutely central importance to this study—*militarization produces increased human rights violations*. It therefore becomes imperative for rights groups dedicated to justice seeking to dedicate attention to the human cost. Second, these groups suffer from an overall power deficit vis-à-vis the military, as well as a relative deficit in expertise regarding most aspects of civil-military relations. Rights advocates therefore seek to exploit advantages that compensate

for the power discrepancy. Judicial accountability provides a particularly compelling avenue for contestation. The origin of rights groups is rooted in demands for adherence to equal application of the law, and they possess deep experience in mobilizing around legal demands. Moreover, rights abuses—and the legal transgressions they signify—are observable and concrete, facilitating efforts to place them on the political agenda.

The oversight coalition's efforts to press this advantage leads to a third observation: judicial accountability occupies a privileged place in the *transnational* realm of civil-military contestation. Even when foreign governments—primarily the U.S., in the case of both Colombia and Mexico—are playing the role of regime benefactor, the oversight coalition can make forceful arguments for conditioning security assistance or other bilateral cooperation on judicial accountability. The obligation to prevent impunity is part of the “hard streambed” of international law (Sikkink and Kim 2013, 275), and jurisprudence in the bodies that oversee treaty commitments has evolved toward consensus on the need to restrict the scope of the military justice system—the most formidable obstacle to military judicial accountability in nearly every Latin American country. Even when rights conditions are weakly enforced, they can provide institutional venues for the transmission of information, the expression of demands, and the exposure of noncompliance with international law. As Chapter 4 illustrates, material leverage, in the form of a free trade agreement pending before Congress, was particularly important in forcing Colombia to take concrete steps toward prosecutions for murders perpetrated by soldiers. As noted in Chapter 5, the obvious conflict between Mexican and international law that resulted from a series of rulings by the Inter-American Court of Human Rights was the key to unblocking jurisdictional reform legislation.

The empirical chapters therefore demonstrate how effective mobilization of international pressure by the oversight coalition can increase both the reputational and the material costs of

preserving military impunity in militarizing states. However, they also show that converting international pressure into genuine, sustained accountability—i.e., investigations and prosecutions—depends as much on domestic politics as it does on the law. The military is at the heart of a powerful bloc I label the *social order coalition*, which also includes civil society members and governmental figures who prioritize mission compliance and effectiveness over strict adherence to human rights. The president that initiates militarization—Álvaro Uribe in Colombia, and Felipe Calderón in Mexico—forges a strong connection to the military, and these presidents will take only the minimum steps necessary to deflect international pressure. Even after the “false positives” military murders became an international scandal, President Uribe frequently signaled his allegiance to the military. For example, he fired officers linked to extrajudicial executions—but replaced them with similarly implicated officials. In Mexico, when President Calderón belatedly submitted a bill to restrict the scope of military justice, his administration’s proposals were clearly insufficient to comply with Mexico’s treaty obligations.

By contrast, a fourth observation relates to the presidents who *inherit* militarization policies from their predecessors: these successors, even if broadly tied to the social order coalition, can pursue policy alternatives to militarization. This can pose a complicated political equation: shifts away from militarization create a potential threat to military prerogatives and can exacerbate divides in the social order coalition. By opting to seek the potentially historic payoff of a peace accord with FARC guerrillas, Colombian president Juan Manuel Santos created a wedge between the governing coalition and the diehard members of the social order coalition led by Uribe. While the split created massive political problems for Santos, it also opened the political space in which prosecutors successfully mounted hundreds of murder cases against soldiers, achieving what I label *routinized accountability*. In Mexico, by contrast, President Enrique Peña Nieto was

unsuccessful (and unserious) in his efforts to reorient security policy via police reform. International pressure and the initial steps toward deemphasizing militarization were sufficient to move Mexico from the enduring autonomy that defined the Calderón administration toward *contingent reform*, and the military was subjected to a handful of prosecutions of rights-violating soldiers. However, deteriorating security conditions prompted a reaffirmation of the presidential-military alliance, codified with the passage of the Internal Security Law in December 2017.

### **Case Study Lessons and Theoretical Contribution**

The case studies offer a number of lessons relevant to the study of civil-military relations and human rights mobilization. Some of these lessons stem from within-country variation over time, while others are gleaned from the cross-country comparison.

The broadest lesson, again, is that militarization does not automatically result in reinforced or expanded military autonomy. This is an important finding because it runs counter to the logic that internal threats and executive dependence inhibit the development of more democratic civil-military relations (Stepan 1973; Rial 1996; Hunter 1996; Desch 1999; Croissant et al. 2011; Diamint 2015). Such theories are not necessarily wrong: many states that adopt militarization policies will indeed empower the military and experience impeded or diminished democratic oversight. But my findings suggest that militarization's dynamics contain an important element of self-contradiction that must be incorporated into explanatory frameworks. Additional insights gained from the *comparative* examination of Mexico and Colombia are as follows:

- The study reconfirms the importance of a state's degree of vulnerability to external pressure, as well as the fact that material leverage is more effective than "moral" leverage (aka shaming). Colombia is particularly illustrative with respect to material leverage.

Colombia's security budget was far more dependent on U.S. beneficence than Mexico's. Threats to cut funding and delays in the disbursement of funds—almost always driven by Congress—prompted visible changes in Colombian rhetoric and practices on several occasions. An even more powerful instrument was the U.S.-Colombia free trade agreement, which required Congressional ratification. Democrats made Colombia wait nearly *five full years* before passing the bill; while much of the delay stemmed from discontent with violence against Colombian trade unionists rather than military impunity, the FTA provided an ideal hook for rights advocates to call attention to an array of abuses in Colombia. Mexico, by contrast, is far less vulnerable to pressure, for several reasons. First, U.S. security assistance amounted to a much smaller portion of the security budget. Second, Mexican political elites are famously prickly about sovereignty relative to the U.S.—especially on drug and security issues, as Mexico's violence is widely and justifiably attributed to U.S. drug consumption. Finally, the bilateral relationship is usually deemed far too important to upset Mexican officials with complaints about human rights. This meant that Mexico both received less criticism and was less inclined to change behavior based on rights complaints.

- That said, both countries care about their international image as well, making shaming a useful complement to material leverage. Colombia sought to escape the near-pariah status it experienced in the 1990s, while Mexican leaders sought to cultivate the image of a democratic (Fox and Calderón) and modernizing (Peña Nieto) nation. The passage of military justice reform in Mexico is a good example of shaming's effectiveness: the direct economic costs at stake were minor, but the volume of international criticism (including

from U.S. members of Congress) had proved an irritant in international relations (see Chapter 6).

- Notably, the strength of rights conditions attached to U.S. security assistance is only weakly correlated with funding decisions. Provisions requiring progress toward ending military impunity were explicit in the laws governing assistance to both countries, but the State Department—in its zeal to ensure smooth bilateral relations and effective program implementation—angered oversight coalition members almost every year by “certifying” often-dubious rights progress in each country. Nevertheless, the requirement that both the State Department and recipient governments establish forums to solicit NGO input gave rights groups a key venue to provide information and express grievances and demands.
- A major determinant of the level of international pressure is the strength of the oversight coalition for each respective country. Colombia’s dense, coordinated, well-articulated, and experienced rights network facilitated sustained mobilization both at home and abroad. Mexico possesses a set of similarly sophisticated NGOs, but during the period of analysis they were more fragmented across the country, less coordinated, and less firmly embedded in the international domain. The difference in organization is most stark with respect to documentation of rights abuses. Colombia’s violence offered the “advantage” of often being tied to identifiable actors (guerrillas, paramilitaries, state security forces), while the identity of Mexican victimizers is much more shadowy. Nonetheless, the multi-decade emphasis on coordination and professionalized documentation meant that Colombian rights advocates possessed much more comprehensive data to back their claims in international venues compared to their Mexican counterparts. Importantly, this applies at

the domestic level as well: Gallagher (2015) shows how Colombian groups were better able than Mexican ones to provide detailed data that helped “unblock” prosecutions.

- The nature of the policy alternative to militarization matters as well. Santos’s dogged pursuit of a peace process resulted in part from the high potential payoff—as evidenced by his receipt of the 2016 Nobel Peace Prize. Abandoning the peace process would have been hugely painful, given the legacies of former presidents Belisario Betancur and especially Andrés Pastrana as “failed peace” presidents. For Peña Nieto, on the other hand, subordinating police reform to renewed reliance on the military starting in 2016 carried little immediate cost, especially given that the administration’s attempts to produce an alternative to militarization were largely cosmetic to begin with.

An additional set of important lessons emerges from the examination of both cross-country *and* within-country variation.

- Institutional architecture: The importance of civilian presence within the Ministry of Defense is a fundamental tenet of civil-military scholarship. Mexico’s anachronistic defense structure, with its separate Army and Navy ministries, each led by an active-duty official, serves as one of the most potent sources of military influence. It allows unmediated access to the president, makes the chain of command overly vertical, and provides the military a significant asymmetric information advantage (Pion-Berlin 2009; Feaver 2003). Also, the institutions (especially the more insular Army) evolved little compared to Colombia during the period of analysis, even as an atmosphere of mutating criminal violence and expanding rights contestation underscored the importance of effective institutional response. A prime example is the Army’s refusal to cooperate with the investigation into the 43 missing students, which transmitted a message of anti-democratic

levels of autonomy. In Colombia, by contrast, civilian presence within the Ministry of Defense had multiple important effects. First, it limited (though did not resolve) the military's asymmetric information advantage. Second, the gradually increasing civilian presence over time helped produce a deeper pool of civilians with firsthand knowledge of the military's internal workings. Third, it helped military members become more comfortable communicating with civilians—a strong contrast to the extreme wariness of engaging civilian interlocutors displayed by Mexican military officials (the Army in particular).

- A related point bears separate mention. Scholars commonly describe the need for civilian ministers as stemming from the need to “prepare the armed forces to serve the policy goals of governments...leaders must be in place to ensure that policy preferences get translated into defense actions” (Pion-Berlin 2009, 567). However, the Colombian case presents an interesting twist: even as then defense minister Juan Manuel Santos continued to vigorously defend the military in public, he took aggressive steps to stop the “false positives” epidemic. Santos's actions were borne not of moral righteousness, but rather reflected the acute political olfactory sense of a future presidential candidate who noted a political threat. Santos seemed to perceive the magnitude of the potential scandal and take proactive action in a way that rarely characterizes active-duty officials in nearly any country. Given that militarization raises the prominence of defense institutions, it should lead more talented or ambitious politicians to seek ministerial positions—one of Santos's ministers, Juan Carlos Pinzón, for instance, was a (failed) presidential candidate in 2018. This makes Mexico's lack of civilian presence during militarization appear to be a missed opportunity for civilians and defense institutions alike.



- Hinges: Gallagher (2015) emphasizes the importance of specific entities that can serve as hinges between civil society and the state. My findings concur with Gallagher in highlighting the crucial role played by the UN High Commissioner for Human Rights office in Colombia. At the level of the national government, the UNHCHR's influence reflects the greater embeddedness of international institutions within Colombian politics compared with Mexico—partly a product of Colombia's greater vulnerability to international pressure. This poses a contrast with Mexico's more conflictive relations with international bodies.<sup>27</sup> Although a handful of individuals also played a hinge role in Mexico, they were concentrated in the Ministry of Foreign Affairs, and had little convocation power within Mexico, let alone influence over decisions regarding the military. The National Human Rights Commission was passive for much of the period of analysis, though it began to fulfill its natural hinge role starting in 2014. For most of the period, Mexico lacked an entity of equivalent stature and influence to the UNHCHR in Colombia—and by the halfway point of the Peña Nieto administration, the government was caught in a cycle of conflict with representatives of supranational organizations, including both UN and IACHR representatives (see Chapter 6). This lack of hinges limits informational exchanges that can help foster cross-institutional relationships and resolve actual or potential conflicts.

Finally, *within-country variation* produces an additional set of observations:

- Social order coalition strength: The cohesion and strength of the social order coalition is a key determinant of the potential for increases in democratic oversight. Even when under

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<sup>27</sup> Mexico also has an UNHCHR office, but unlike the Colombia office, it does not produce an authoritative annual report and was rarely mentioned by interviewees as an important interlocutor.

significant pressure, a strong, unified social order coalition has multiple ways of signaling strength. The relevant case example is Colombian judicial accountability under Uribe, where the president's frequent declarations of alliance with the oversight coalition and stigmatization of oversight coalition members bolstered officers' instinctive noncooperation with investigators and prosecutors. Conversely, disunity in the social order coalition obliged Santos to rely more on centrist and center-left parties and international support to maintain a viable pro-peace coalition. This manifested in Santos's avoidance of stigmatization toward human rights advocates and the judicial system, thereby sending signals that exogenous pressure to limit prosecution had declined. Even as the administration pursued legislation to re-expand the scope of the military justice system, divides within the government regarding the bill were well-known to prosecutors (interview with adviser to the attorney general, 2015) and Colombian legislators.<sup>28</sup>

- Similarly, in Mexico, Calderón's alignment with the military created an obstacle to reform. Despite his shared status with Uribe as a militarizer, Calderón placed a far higher priority on human rights than Uribe, as illustrated by the 2011 constitutional reform (see Chapter 6). Yet this only highlighted the administration's consistent, firm defenses of the military, especially in the early phase of militarization. The dispatch of the sitting interior minister to defend the military in the 2009 *Radilla* case at the Inter-American Court of Human Rights epitomizes this commitment. While Mexico's within-country variation was far more limited than Colombia's, the first half of the Peña Nieto administration did exhibit a softening of the presidential-military alliance. As I argue in Chapter 6, Peña Nieto took advantage of the policy inheritor's ability to recalibrate the costs of enduring military legal

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<sup>28</sup> In a sense, the jurisdictional counterreform was “reverse window dressing”—a project intended to allay military unease without fundamentally changing judicial patterns.

autonomy. Not only did the administration promote a (limited) military justice reform, it encouraged the military to transfer abuse cases to the civilian justice system and oversaw a temporary, limited series of prosecutions of soldiers.

These results point toward a primary theoretical contribution of this study: the integration of civil-military relations and human rights scholarship. Latin America is ground zero for the trend toward militarized public security, and civil-military relations scholars have begun to take note, but most have not adequately updated their frameworks. This dissertation's findings support neither the alarmist framing (Diamint 2015) that militarization leads inextricably toward accumulated military power; nor the more sanguine view (Pion-Berlin and Trinkunas 2005, 2011) that with proper training and force structure, military power can be channeled toward an effective internal role; nor a simplified perspective (Arzt 2011, 220) that as long as civilians still control mission assignments, military power has not necessarily increased. Rather, this study says: regardless of one's opinion of the wisdom of militarization, it is not always a recipe for military empowerment. The question instead becomes: what can we learn about the conditions under which militarization can lead to increased democratic oversight?

The key to answering this question lies with one fundamental premise regarding a predictable, empirically verified consequence of militarization: human rights abuses. What happens then? Who are the key actors, and what are the central arenas of contestation? Which disaggregated dimensions of civil-military relations should we focus on to evaluate the impact of militarization on meaningful democracy? A key innovation of this study is to answer these questions by complementing civil-military scholarship's traditional focus on the relationships between the military and elected officials with attention to the broader set of actors that insist on adding their voices to the debate.

In addition, this study contributes to human rights scholarship by integrating a society-centered view of human rights contestation with a deep understanding of the complicated, multilevel politics that characterize the presidential-military-society triad. Scholarship on military accountability within political science has focused on transitional and post-transitional justice for the obvious reason that those are the processes that provide data and cross-country variation. A drawback to that frame, however, is that post-transition processes occur in settings in which military power has declined. This study suggests that accountability is possible even in highly unlikely settings: those in which military roles and missions are expanding, not diminishing. Militarization as a phenomenon constitutes a “least likely” context for increased oversight and accountability. Yet this study shows it is possible, even if most militarizing countries never reach Colombian levels of judicial accountability. As militarization policies become more common, scholars interested in rights and accountability will benefit from a better understanding of the variables and mechanisms that explain variation. This study has made an initial attempt at elaborating a framework to address this challenge in a way that embraces deep, contextually-informed explanation but avoids accumulating so many variables that results become overdetermined.

### **Practical Lessons**

The aforementioned within-country and cross-country lessons help bring order to analysis of the uncertain and contradictory effects of militarization on civil-military relations. The study also offers a number of practical lessons—and a few warnings—for civil-military relations analysts and advocates of increased democratic oversight:

- Not only does the study validate rights activists' warning that militarization is liable to produce human rights abuses, it also calls attention to the high potential for perverse incentives. Even a civilian leader as militaristic as Colombia's Uribe did not actively seek to promote false positives-type murders—but his unceasing demands for results stimulated the environment that produced them. On the other hand, Colombia's experience in the 1990s illustrates a different type of perverse incentive: the security vacuum that resulted from military weakness in that era precipitated the dramatic expansion of the murderous paramilitaries. This underscores the importance for matching prospective phase outs of the military with a major police reform effort.
- Interviews with members of the military in both countries reveal that doctrine related to the enemy remains extremely anachronistic, with NGOs perceived as communist infiltrators (Colombia) or pawns of drug cartels (Mexico). While such rhetoric is self-serving, it also becomes ingrained. Accountability advocates ought to consider active efforts to acquire greater expertise in military doctrine in order to more effectively engage military officials responsible for military education and doctrine.
- Discussion in Mexico of institutional modernization—specifically, civilianizing the military institutions—is jarring in its absence. Given the reaffirmation described above of the importance of civilian-led ministries of defense, a focused campaign by the Mexican oversight coalition to promote this shift is important, at least as a step to initiate a broader debate within the country. Colombia can provide a lesson to potentially boost the debate. When Santos took the blame for the misuse of the Red Cross logo (see Chapter 3) he deflected blame from military commanders. The suggestion that civilians could play a

similar lightning rod role in Mexico could serve as an initial point of dialogue—once the military is even ready to have the discussion.

- Since the 1980s, Latin American military officials have habitually claimed—as Mexico’s General Cienfuegos repeatedly did in media interviews—that they do not want an expanded internal security role, especially in combatting drug traffickers who can tempt soldiers with large bribes. This may be valid for militaries that have not yet embarked on militarization, but oversight coalition members should be wary of embracing the claim that the military truly seeks an exit from new roles or expanded missions. On no issue did interviews with experienced military interlocutors show a wider gap from conventional wisdom. As in any institution, resources and power, once obtained, are difficult to give up.

### **Militarization, Accountability, and Democracy**

The issues addressed in this study are inseparable from normative claims about the obligations of the state. To make the subtext explicit, increased democratic oversight of the military—especially increased judicial accountability—is crucial for making democracy more meaningful. When the state can violate fundamental rights with impunity, “universal effective citizenship” (Brinks 2008, 8) is impossible. The symbolism of militaries can make the failure to provide redress for citizen grievances particularly bitter: unlike a police department, the decision to protect victimizers does not just implicate a municipality or state—it implicates the institution that is supposed to embody the nation. The structure and hierarchy of militaries has a similar effect: when rights violators are protected, it implicates the entire chain of command—including the civilian commander-in-chief.

Of course, as Colombia’s long history shows, deficient oversight is not incompatible with the endurance of electoral democracy. Abuses and impunity are not even incompatible with

popularity—just look at the Colombian and Mexican militaries’ approval ratings. Yet when civilian policymakers tie their policy programs to such a powerful and volatile entity, they also acquire increased responsibility for the consequences. For this reason, it is crucial to seek ways to ensure that the civilians in charge of militarization actually feel the consequences of their policy choices. If militarization effectively quells a public security problem with minimal “collateral damage,” all is democratically well. But when the consequences are less benign, it is critical that mechanisms exist to enforce political and legal costs. This study has privileged judicial accountability, but civilians’ shared responsibility for militarization’s consequences is one reason why the other dimensions matter as well. Greater civilian integration into defense structures is necessary not just to rationalize budget management, but to bring democratic politics into the management of state coercive power. The only thing that nearly all scholars of Latin American civil-military relations concur on is that Huntington (1957) was off the mark: a “professional” military is not necessarily a democratic military.

If this study has shown anything, it is that achieving increased democratic oversight under militarization is extremely difficult. With respect to judicial accountability, moving from a starting point of what I describe as enduring autonomy to even the intermediate level—contingent reform—requires an adequate domestic legal framework, an oversight coalition capable of mobilizing international pressure, and a military that cannot or will not credibly threaten a coup. To reach the level of routinized accountability, those conditions must be matched by a president willing to break with the military, capable (and sometimes brave) prosecutors, and effective checks on the power of spoilers. As the Colombian case shows, this is not an impossible task. But it is one that requires sustained effort to build mechanisms that gradually assert extend democratic control over—and democratic norms into—the most challenging of institutions.

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